

# FEDERAL REGISTER



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# Rules and Regulations

## Title 7—AGRICULTURE

### Chapter VIII—Commodity Stabilization Service (Sugar), Department of Agriculture

#### SUBCHAPTER B—SUGAR REQUIREMENTS AND QUOTAS

[Sugar Reg. 811, Amdt. 2]

### PART 811—CONTINENTAL SUGAR REQUIREMENTS AND AREA QUOTAS

#### Determination and Proration of Area Deficits and Adjusted Quotas

**Basis and purpose.** The purpose of this amendment to Sugar Regulation 811 is to determine and prorate deficits in quotas for domestic areas pursuant to the provisions of the Sugar Act of 1948, as amended, and as further amended by Public Law 86-592 approved July 6, 1960. By Proclamation No. 3355 effective July 8, 1960 (25 F.R. 6414) the President of the United States delegated to the Secretary of Agriculture the authority vested in the President by section 408(b)(2) and section 408(b)(3) of the Act, such authority to be exercised with the concurrence of the Secretary of State. By virtue of such delegation of authority, and pursuant to section 204(a) and section 408(b)(2) of the Act, the deficits of domestic areas determined herein are allocated to other domestic areas. The total of such deficits include 155,334 short tons, raw value, which is equivalent to the quantity allocable from such deficits to Cuba. By virtue of the determination by the President of the quota for Cuba in Proclamation No. 3355 such 155,334 short tons, raw value, are not allocable to Cuba and, with the concurrence of the Secretary of State, are allocated by this regulation to domestic areas pursuant to section 408(b)(2) of the Act. Of the total of such deficits, 402,666 short tons, raw value, are prorated to other domestic areas pursuant to section 204(a) of the Act.

The usual procedure of first prorating the part of the deficits attributable to the inability to market that part of the quotas determined under section 202(a)(2) of the Act for Hawaii, Puerto Rico and the Virgin Islands has not been followed, as no change in the allocation of the deficits would result therefrom.

The quotas and prorations established herein differ from those in effect under Sugar Regulation 811 (24 F.R. 10425). To permit areas for which larger quotas or prorations are hereby established to plan to market and to market in an orderly manner the larger quantity of sugar, it is essential that this amendment be made effective immediately. Therefore, it is hereby determined and found that compliance with the notice, procedure and effective date requirements of the Administrative Procedure

Act is unnecessary, impracticable and contrary to the public interest and the amendment herein shall become effective when published in the FEDERAL REGISTER.

By virtue of the authority vested in the Secretary of Agriculture by the Sugar Act of 1948, as amended (61 Stat. 928, as amended), and the Proclamation of the President of the United States No. 3355 (25 F.R. 6414), Sugar Regulation 811 (24 F.R. 10425; 25 F.R. 6617) is hereby amended by adding a new § 811.4, to read as follows:

#### § 811.4 Determination and proration of area deficits and adjusted quotas.

(a) *Deficit in quotas established in § 811.2.* It is hereby determined pursuant to section 204(a) of the Act, that for the calendar year 1960 Hawaii, Puerto Rico and the Virgin Islands will be unable by 225,000, 325,000 and 8,000 short tons, raw value of sugar, respectively, to market the quotas established for such areas in § 811.2

(b) *Proration of deficits and quotas in effect.* The total of the deficits in the quotas determined in paragraph (a) of this section amounts to 558,000 short tons, raw value, of which 402,666 short tons, raw value are hereby prorated pursuant to section 204(a) of the Act to other domestic areas on the basis of the quotas established for those areas in § 811.2, and the balance of 155,334 short tons, raw value, is prorated to other domestic areas pursuant to section 408(b) of the Act on the basis of the quotas established for those areas in § 811.2. The quotas for such areas shall be those established in § 811.2 plus the quantities prorated herein, as follows:

[Short tons, raw value]

Area	Prorated herein (1)	Quotas including prorations herein (2)
Domestic beet sugar.....	426,700	2,514,945
Mainland cane sugar.....	131,300	773,873
Hawaii.....	0	1,165,444
Puerto Rico.....	0	1,218,620
Virgin Islands.....	0	16,618

**Statement of bases and considerations.** Deficits in the quotas for Hawaii, Puerto Rico and the Virgin Islands are determined in § 811.4(a) on the basis of the quotas for these areas as established in § 811.2 and the expectation that the total supply of sugar available for marketing in the continental United States from Hawaii, Puerto Rico and the Virgin Islands will not exceed 940,444, 893,620 and 8,618 short tons, raw value, respectively. The harvesting of the crop in Puerto Rico and the Virgin Islands has been completed. The harvesting of the crop in Hawaii will continue until late in the year.

(Sec. 403, 61 Stat. 932; 7 U.S.C. 1153. Interprets or applies sec. 202; 61 Stat. 924;

7 U.S.C. 1112. Pub. Law 86-592; Proclamation No. 3355, 25 F.R. 6414)

Done at Washington, D.C., this 13th day of July 1960.

MARVIN L. McLAIN,  
Acting Secretary.

THOMAS C. MANN,  
Assistant Secretary of State.

[F.R. Doc. 60-6626; Filed, July 15, 1960; 8:48 a.m.]

### Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders), Department of Agriculture

[Valencia Orange Reg. 206]

### PART 922—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

#### Limitation of Handling

#### § 922.506 Valencia Orange Regulation 206.

(a) *Findings.* (1) Pursuant to the marketing agreement and Order No. 22, as amended (7 CFR Part 922), regulating the handling of Valencia oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations and information submitted by the Valencia Orange Administrative Committee, established under the said marketing agreement and order, as amended, and upon other available information, it is hereby found that the limitation of handling of such Valencia oranges as hereinafter provided will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 1001-1011) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for Valencia oranges and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period

specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such Valencia oranges; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on July 14, 1960.

(b) *Order.* (1) The respective quantities of Valencia oranges grown in Arizona and designated part of California which may be handled during the period beginning at 12:01 a.m., P.s.t., July 17, 1960, and ending at 12:01 a.m., P.s.t., July 24, 1960, are hereby fixed as follows:

- (i) District 1: Unlimited movement;
- (ii) District 2: 625,000 cartons;
- (iii) District 3: Unlimited movement.

(2) All Valencia oranges handled during the period specified in this section are subject also to all applicable size restrictions which are in effect pursuant to this part during such period.

(3) As used in this section, "handled," "handler," "District 1," "District 2," "District 3," and "carton" have the same meaning as when used in said marketing agreement and order, as amended.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: July 15, 1960.

FLOYD F. HEDLUND,  
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 60-6747; Filed, July 15, 1960; 11:22 a.m.]

[Plum Order 18]

### PART 936—FRESH BARTLETT PEARS, PLUMS, AND ELBERTA PEACHES GROWN IN CALIFORNIA

#### Regulation by Grade and Size

##### § 936.655 Plum Order 18.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 36, as amended (7 CFR Part 936), regulating the handling of fresh Bartlett pears, plums, and Elberta peaches grown in the State of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations of the Plum Commodity Committee, established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of plums of the variety hereinafter set forth, and in the manner herein provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable, unnecessary, and con-

trary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 1001-1011) in that, as hereinafter set forth, the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient; a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective not later than the date hereinafter specified. A reasonable determination as to the supply of, and the demand for, such plums must await the development of the crop thereof, and adequate information thereon was not available to the Plum Commodity Committee until the date hereinafter set forth on which an open meeting was held, after giving due notice thereof, to consider the need for, and the extent of, regulation of shipments of such plums. Interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; shipments of the current crop of such plums are expected to begin on or about the effective date hereof; this section should be applicable to all such shipments in order to effectuate the declared policy of the act; the provisions of this section are identical with the aforesaid recommendation of the committee; and information concerning such provisions and effective time has been disseminated among handlers of such plums and compliance with the provisions of this section will not require of handlers any preparation therefor which cannot be completed by the effective time hereof. Such committee meeting was held on July 12, 1960.

(b) *Order.* (1) During the period beginning at 12:01 a.m., P.s.t., July 17, 1960, and ending at 12:01 a.m., P.s.t., November 1, 1960, no shipper shall ship any package or container of Kelsey plums except in accordance with the following terms and conditions:

(i) Such plums grade at least U.S. No. 1, as required by the provisions of § 936.636 (Plum Order 1; 25 F.R. 4539) except that a total tolerance of ten (10) percent for defects not considered serious damage is permitted in addition to the tolerances permitted for such grade;

(ii) Such plums are of a size that, when packed in a standard basket, they will pack at least a 4 x 4 standard pack and will have a net weight of not less than twenty-nine (29) pounds: *Provided*, That, not to exceed ten (10) percent, by count, of the packages or containers in any lot may fail to meet such net weight requirements; and

(iii) The diameters of the smallest and largest plums in such package or container do not vary more than one-fourth ( $\frac{1}{4}$ ) inch: *Provided*, That, a total of not more than five (5) percent, by count, of

the plums in the package or container may fail to meet this requirement.

(2) When used in this section, "U.S. No. 1," "serious damage," and "standard pack" shall have the same meaning as set forth in the revised United States Standards for Plums and Prunes (Fresh) (§§ 51.1520 to 51.1537 of this title); "standard basket" shall mean the standard basket set forth in paragraph 1 of section 828.1 of the Agricultural Code of California; "diameter" shall mean the distance through the widest portion of the cross section of a plum at right angles to a line running from the stem to the blossom end; and, except as otherwise specified, all other terms shall have the same meaning as when used in the amended marketing agreement and order.

(3) Section 936.143 sets forth the requirements with respect to the inspection and certification of shipments of fruit covered by this regulation. Such section also prescribes the conditions which must be met if any shipment is to be made without prior inspection and certification. Notwithstanding that shipments may be made without inspection and certification, each shipper shall comply with all grade and size regulations applicable to the respective shipment.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: July 14, 1960.

FLOYD F. HEDLUND,  
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 60-6695; Filed, July 15, 1960; 8:52 a.m.]

[Plum Order 19]

### PART 936—FRESH BARTLETT PEARS, PLUMS, AND ELBERTA PEACHES GROWN IN CALIFORNIA

#### Regulation by Size

##### § 936.656 Plum Order 19.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 36, as amended (7 CFR Part 936), regulating the handling of fresh Bartlett pears, plums, and Elberta peaches grown in the State of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations of the Plum Commodity Committee, established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of plums of the varieties hereinafter set forth, and in the manner herein provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 1001-1011) in that, as hereinafter set forth, the time inter-

vening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient; a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective not later than the date hereinafter specified. A reasonable determination as to the supply of, and the demand for, such plums must await the development of the crop thereof, and adequate information thereon was not available to the Plum Commodity Committee until the date hereinafter set forth on which an open meeting was held, after giving due notice thereof, to consider the need for, and the extent of, regulation of shipments of such plums. Interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; shipments of the current crop of such plums are expected to begin on or about the effective date hereof; this section should be applicable to all such shipments in order to effectuate the declared policy of the act; the provisions of this section are identical with the aforesaid recommendation of the committee; and information concerning such provisions and effective time has been disseminated among handlers of such plums and compliance with the provisions of this section will not require of handlers any preparation therefor which cannot be completed by the effective time hereof. Such committee meeting was held on July 12, 1960.

(b) *Order.* (1) During the period beginning at 12:01 a.m., P.s.t., July 17, 1960, and ending at 12:01 a.m., P.s.t., November 1, 1960, no shipper shall ship any package or container of Emily or President plums, unless:

(i) Such plums are of a size that, when packed in a standard basket, they will pack at least a 4 x 5 standard pack and will have a net weight of not less than thirty (30) pounds: *Provided*, That, not to exceed ten (10) percent, by count, of the packages or containers in any lot may fail to meet such net weight requirement; and

(ii) The diameters of the smallest and largest plums in such package or container do not vary more than one-fourth ( $\frac{1}{4}$ ) inch: *Provided*, That, a total of not more than five (5) percent, by count, of the plums in the package or container may fail to meet this requirement.

(2) When used in this section, "standard pack" shall have the same meaning as set forth in the revised United States Standards for Plums and Prunes (Fresh) (§§ 51.1520-1537); "standard basket" shall mean the standard basket set forth in paragraph 1 of section 828.1 of the Agricultural Code of California; "diameter" shall mean the distance through the widest portion of the cross section of a plum at right angles to a line running from the stem to the blossom end; and, except as otherwise specified, all

other terms shall have the same meaning as when used in the amended marketing agreement and order.

(3) Section 936.143 sets forth the requirements with respect to the inspection and certification of shipments of fruit covered by this regulation. Such section also prescribes the conditions which must be met if any shipment is to be made without prior inspection and certification. Notwithstanding that shipments may be made without inspection and certification, each shipper shall comply with all grade and size regulations applicable to the respective shipment.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: July 14, 1960.

FLOYD F. HEDLUND,  
Deputy Director, Fruit and  
Vegetable Division, Agricultural  
Marketing Service.

[F.R. Doc. 60-6696; Filed, July 15, 1960;  
8:52 a.m.]

[Plum Order 20]

## PART 936—FRESH BARTLETT PEARS, PLUMS, AND ELBERTA PEACHES GROWN IN CALIFORNIA

### Regulation by Size

#### § 936.657 Plum Order 20.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 36, as amended (7 CFR Part 936), regulating the handling of fresh Bartlett pears, plums, and Elberta peaches grown in the State of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations of the Plum Commodity Committee, established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of plums of the variety hereinafter set forth, and in the manner herein provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 1001-1011) in that, as hereinafter set forth, the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient; a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective not later than the date hereinafter specified. A reasonable determination as to the supply of, and the demand for, such plums must await the development of the crop thereof, and adequate in-

formation thereon was not available to the Plum Commodity Committee until the date hereinafter set forth on which an open meeting was held, after giving due notice thereof, to consider the need for, and the extent of, regulation of shipments of such plums. Interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; shipments of the current crop of such plums are expected to begin on or about the effective date hereof; this section should be applicable to all such shipments in order to effectuate the declared policy of the act; the provisions of this section are identical with the aforesaid recommendation of the committee; and information concerning such provisions and effective time has been disseminated among handlers of such plums and compliance with the provisions of this section will not require of handlers any preparation therefor which cannot be completed by the effective time hereof. Such committee meeting was held on July 12, 1960.

(b) *Order.* (1) During the period beginning at 12:01 a.m., P.s.t., July 17, 1960, and ending at 12:01 a.m., P.s.t., November 1, 1960, no shipper shall ship any package or container of Sharkey plums, unless:

(i) Such plums are of a size that, when packed in a standard basket, they will pack at least 4 x 5 standard pack and will have a net weight of not less than twenty-seven (27) pounds: *Provided*, That, not to exceed ten (10) percent, by count, of the packages or containers in any lot may fail to meet such net weight requirement; and

(ii) The diameters of the smallest and largest plums in such package or container do not vary more than one-fourth ( $\frac{1}{4}$ ) inch: *Provided*, That, a total of not more than five (5) percent, by count, of the plums in the package or container may fail to meet this requirement.

(2) When used in this section, "standard pack" shall have the same meaning as set forth in the revised United States Standards for Plums and Prunes (Fresh) (§§ 51.1520 to 51.1537 of this title); "standard basket" shall mean the standard basket set forth in paragraph 1 of section 828.1 of the Agricultural Code of California; "diameter" shall mean the distance through the widest portion of the cross section of a plum at right angles to a line running from the stem to the blossom end; and, except as otherwise specified, all other terms shall have the same meaning as when used in the amended marketing agreement and order.

(3) Section 936.143 sets forth the requirements with respect to the inspection and certification of shipments of fruit covered by this regulation. Such section also prescribes the conditions which must be met if any shipment is to be made without prior inspection and certification. Notwithstanding that shipments may be made without inspection and certification, each shipper shall comply with all grade and size regulations applicable to the respective shipment.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: July 14, 1960.

FLOYD F. HEDLUND,  
Deputy Director, Fruit and Veg-  
etable Division, Agricultural  
Marketing Service.

[F.R. Doc. 60-6697; Filed, July 15, 1960;  
8:52 a.m.]

[Plum Order 21]

# **PART 936—FRESH BARTLETT PEARS, PLUMS, AND ELBERTA PEACHES GROWN IN CALIFORNIA**

## **Regulation by Size**

### **§ 936.658 Plum Order 21.**

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 36, as amended (7 CFR Part 936), regulating the handling of fresh Bartlett pears, plums, and Elberta peaches grown in the State of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations of the Plum Commodity Committee, established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of plums of the variety hereinafter set forth, and in the manner herein provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 1001-1011) in that, as hereinafter set forth, the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient; a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective not later than the date hereinafter specified. A reasonable determination as to the supply of, and the demand for, such plums must await the development of the crop thereof, and adequate information thereon was not available to the Plum Commodity Committee until the date hereinafter set forth on which an open meeting was held, after giving due notice thereof, to consider the need for, and the extent of, regulation of shipments of such plums. Interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; shipments of the cur-

rent crop of such plums are expected to begin on or about the effective date hereof; this section should be applicable to all such shipments in order to effectuate the declared policy of the act; the provisions of this section are identical with the aforesaid recommendation of the committee; and information concerning such provisions and effective time has been disseminated among handlers of such plums and compliance with the provisions of this section will not require of handlers any preparation therefor which cannot be completed by the effective time hereof. Such committee meeting was held on July 12, 1960.

(b) *Order.* (1) During the period beginning at 12:01 a.m., P.s.t., July 17, 1960, and ending at 12:01 a.m., P.s.t., November 1, 1960, no shipper shall ship any package or container of Late Duarte plums, unless:

(i) Such plums are of a size that, when packed in a standard basket, they will pack at least a 4 x 5 standard pack and will have a net weight of not less than twenty-eight (28) pounds: *Provided*, That, not to exceed ten (10) percent, by count, of the packages or containers in any lot may fail to meet such net weight requirement; and

(ii) The diameters of the smallest and largest plums in such package or container do not vary more than one-fourth ( $\frac{1}{4}$ ) inch: *Provided*, That, a total of not more than five (5) percent, by count, of the plums in the package or container may fail to meet this requirement.

(2) When used in this section, "standard pack" shall have the same meaning as set forth in the revised United States Standards for Plums and Prunes (Fresh) (§§ 51.1520 to 51.1537 of this title); "standard basket" shall mean the standard basket set forth in paragraph 1 of section 828.1 of the Agricultural Code of California; "diameter" shall mean the distance through the widest portion of the cross section of a plum at right angles to a line running from the stem to the blossom end; and, except as otherwise specified, all other terms shall have the same meaning as when used in the amended marketing agreement and order.

(3) Section 936.143 sets forth the requirements with respect to the inspection and certification of shipments of fruit covered by this regulation. Such section also prescribes the conditions which must be met if any shipment is to be made without prior inspection and certification. Notwithstanding that shipments may be made without inspection and certification, each shipper shall comply with all grade and size regulations applicable to the respective shipment.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: July 14, 1960.

FLOYD F. HEDLUND,  
Deputy Director, Fruit and Veg-  
etable Division, Agricultural  
Marketing Service.

[F.R. Doc. 60-6698; Filed, July 15, 1960;  
8:52 a.m.]

[Lemon Reg. 855]

# **PART 953—LEMONS GROWN IN CALIFORNIA AND ARIZONA**

## **Limitation of Handling**

### **§ 953.962 Lemon Regulation 855.**

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 53, as amended (7 CFR Part 953; 23 F.R. 9053), regulating the handling of lemons grown in California and Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.; 68 Stat. 906, 1047), and upon the basis of the recommendation and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such lemons as hereinafter provided will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (60 Stat. 237; 5 U.S.C. 1001 et seq.) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for lemons and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such lemons; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on July 12, 1960.

(b) *Order.* (1) The respective quantities of lemons grown in California and Arizona which may be handled during the period beginning at 12:01 a.m., P.s.t., July 17, 1960, and ending at 12:01 a.m.,

P.s.t., July 24, 1960, are hereby fixed as follows:

- (i) District 1: Unlimited movement;
  - (ii) District 2: 325,500 cartons;
  - (iii) District 3: Unlimited movement.
- (2) As used in this section, "handled," "District 1," "District 2," "District 3," and "carton" have the same meaning as when used in the said amended marketing agreement and order.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: July 14, 1960.

FLOYD F. HEDLUND,  
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 60-6714; Filed, July 15, 1960; 8:58 a.m.]

[957-319]

## PART 957—IRISH POTATOES GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO AND MALHEUR COUNTY, OREGON

### Limitation of Shipments

**Findings.** (a) Marketing Agreement No. 98, as amended, and Order No. 57, as amended, (7 CFR Part 957), effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), provide methods for limiting the handling of potatoes grown in the production area defined therein through the issuance of regulations authorized in §§ 957.1 through 957.91, inclusive, of the order. The Idaho-Eastern Oregon Potato Committee, pursuant to § 957.51 of the order, has recommended that regulations limiting the handling of 1960 crop potatoes should be issued. The recommendations of the committee and information submitted by it, with other available information, have been considered and it is hereby found that the regulations hereinafter set forth will tend to effectuate the declared policy of the act.

(b) It is hereby found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule making procedure, and postpone the effective date of this section until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 1001-1011) in that (1) the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, (2) more orderly marketing in the public interest, than would otherwise prevail, will be promoted by regulating the shipment of potatoes, in the manner set forth below, on and after the effective date of this section, (3) compliance with this section will not require any special preparation on the part of handlers which cannot be completed by the effective date, (4) reasonable time is permitted, under the circumstances, for such preparation, and (5) information regarding the committee's recommendations has been made available to pro-

ducers and handlers in the production area.

### § 957.319 Limitation of shipments.

During the period from July 18, 1960, through June 30, 1961, no person shall handle any lot of potatoes unless such potatoes meet the requirements of paragraphs (a) and (b) of this section, or unless such potatoes are handled in accordance with paragraphs (c), (d), and (e) of this section.

#### (a) Minimum quality requirements—

(1) *Grade:* All varieties—U. S. No. 2, or better grade.

(2) *Size:* (i) *Round red varieties.* 1 1/8 inches minimum diameter.

(ii) *All other varieties.* 2 inches minimum diameter or 4 ounces minimum weight.

(3) *Cleanliness:* (i) *Kennebec variety.* Not more than "slightly dirty."

(ii) *All other varieties.* "Generally fairly clean."

(b) *Minimum maturity requirements:* (1) *All varieties.* "Slightly skinned" which means that not more than 10 percent of the potatoes in any lot may have more than one-fourth of the skin missing or "feathered."

(2) *Exceptions.* (i) Subject to compliance with subdivision (iii) of this subparagraph, any lot of potatoes not exceeding a total of 50 hundredweight of each variety may be handled for any producer without regard to the foregoing maturity requirements.

(ii) If an officially inspected lot of potatoes meets the foregoing maturity requirements but fails to meet the grade and size requirements, the lot may be regraded. If, after regrading, such lot then meets the grade and size requirements but fails to meet the maturity requirements, as indicated by the applicable Federal-State inspection certificate, such lot if not exceeding 100 hundredweight shall be exempt from the foregoing maturity requirements: *Provided*, That the handler complies with subdivision (iii) of this subparagraph.

(iii) Prior to each shipment of potatoes exempt from the foregoing maturity requirements, the handler thereof shall report to the committee the name and address of the producer of such potatoes, and each such shipment shall be handled as an identifiable entity.

(c) *Special purpose shipments.* (1) The minimum grade, size, cleanliness, and maturity requirements set forth in paragraphs (a) and (b) of this section shall not be applicable to shipments of potatoes for any of the following purposes:

- (i) Certified seed;
- (ii) Charity;
- (iii) Starch;
- (iv) Canning or freezing;
- (v) Dehydration;
- (vi) Experimentation.

(2) The minimum grade, size, cleanliness, and maturity requirements set forth in paragraphs (a) and (b) of this section shall be applicable to shipments of potatoes for each of the following purposes:

(i) *Export: Provided*, That potatoes of a size not smaller than 1 1/2 inches in

diameter may be shipped if the potatoes grade not less than U.S. No. 2; and

(ii) *Potato chipping or prepeeling: Provided*, That potatoes of a size not smaller than 1 1/2 inches in diameter may be shipped if the potatoes grade not less than Idaho Utility, or Oregon Utility, grade.

(d) *Safeguards.* Each handler making shipments of potatoes for starch, canning or freezing, dehydration, experimentation, export, or for prepeeling pursuant to paragraph (c) of this section shall:

(1) Prior to making shipment, apply to the committee for and obtain a Certificate of Privilege to make each shipment;

(2) Pay assessments on each shipment, except shipments for canning or freezing;

(3) Have each shipment inspected, except shipments for canning or freezing;

(4) Upon request by the committee, furnish reports of each shipment pursuant to the applicable Certificate of Privilege;

(5) At the time of applying to the committee for a Certificate of Privilege, or promptly thereafter, furnish the committee with a receiver's or buyer's certification that the potatoes so handled are to be used only for the purpose stated in the application and that the receiver will complete and return to the committee such periodic reports that the committee may require;

(6) Mail to the office of the committee a copy of the bill of lading for each Certificate of Privilege shipment promptly after the date of shipment;

(7) Bill each shipment directly to the applicable processor or receiver.

(e) *Minimum quantity exception.* Each handler may ship up to, but not to exceed 5 hundredweight potatoes any day without regard to the inspection and assessment requirements of this part, but this exception shall not apply to any portion of a shipment that exceeds 5 hundredweight of potatoes.

(f) *Definitions.* The terms "U.S. No. 1," "U.S. No. 2," "fairly clean," and "slightly dirty" shall have the same meaning as when used in the United States Standards for Potatoes (§§ 51.1540 to 51.1556 of this title), including the tolerances set forth therein. The term "generally fairly clean" means that at least 90 percent of the potatoes in a given lot are "fairly clean." The term "prepeeling" means potatoes which are clean, sound, fresh tubers prepared commercially in a prepeeling plant by washing, removal of the outer skin or peel, trimming, and sorting preparatory to sale in one or more of the styles of peeled potatoes described in § 52.2422 (United States Standards for Grades of Peeled Potatoes §§ 52.2421-52.2433 of this title). The terms "Idaho Utility grade" and "Oregon Utility grade" shall have the same meanings as when used in the respective standards for potatoes for the respective States. Other terms used in this section shall have the same meaning as when used in Marketing Agreement

No. 98 and Order No. 57, both as amended.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated July 14, 1960, to become effective July 18, 1960.

FLOYD F. HEDLUND,  
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 60-6713; Filed, July 15, 1960; 8:58 a.m.]

[Avocado Order 19, Amdt. 2]

## PART 969—AVOCADOS GROWN IN SOUTH FLORIDA

### Container Regulation

**Findings.** (1) Pursuant to the marketing agreement, as amended, and Order No. 69, as amended (7 CFR Part 969), regulating the handling of avocados grown in south Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations of the Avocado Administrative Committee, established under the aforesaid marketing agreement and order, and upon other available information, it is hereby found that the limitation on the handling of avocados, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this amendment until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 1001-1011) in that the time intervening between the date when information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the act is insufficient; and this amendment relieves restrictions on the handling of avocados grown in south Florida.

It is, therefore, ordered that paragraph (b) (1) of § 969.319 (Avocado Order 19, 24 F.R. 7355, 9386) is hereby amended to read as follows:

(b) **Order.** (1) On and after the effective time hereof, no handler shall handle any variety of avocados unless such avocados are packed in the containers listed in subdivisions (i) through (viii) of this subparagraph and conform to the net weight requirements of subdivisions (iv), (ix), and (x) of this subparagraph.

(i) Boxes and cartons with inside dimensions  $13\frac{1}{2} \times 16\frac{1}{2} \times 3\frac{3}{4}$  inches.

(ii) Boxes and cartons with inside dimensions  $13\frac{1}{2} \times 16\frac{1}{2} \times 3\frac{3}{4}$  inches.

(iii) Boxes and cartons with inside dimensions  $13\frac{1}{2} \times 16\frac{1}{2} \times 4\frac{1}{2}$  inches: *Provided*, That the avocados in such containers shall be packed in one layer only.

(iv) Boxes and cartons with inside dimensions  $11 \times 16\frac{1}{4} \times 10$  inches: *Pro-*

*vided*, That the individual avocados in such a container shall weigh at least 16 ounces, except that not to exceed 10 percent, by count, of the fruit in each lot may weigh not more than 2 ounces less than 16 ounces, but not to exceed double such tolerance (20 percent) of fruit weighing less than 16 ounces shall be permitted in an individual container in a lot.

(v) Boxes and cartons with inside dimensions  $11\frac{1}{2} \times 15\frac{3}{4} \times 3\frac{3}{4}$  inches.

(vi) Boxes and cartons with inside dimensions  $11\frac{1}{2} \times 15\frac{3}{4} \times 3\frac{3}{4}$  inches.

(vii) Boxes and cartons with inside dimensions  $11\frac{1}{2} \times 15\frac{3}{4} \times 4\frac{1}{4}$  inches.

(viii) Such other types and sizes of containers as may be approved by the Avocado Administrative Committee for testing in connection with a research project conducted by or in cooperation with the said committee: *Provided*, That the handling of each lot of avocados in such test containers shall be subject to the prior approval, and under the supervision, of the Avocado Administrative Committee.

(ix) With respect to the containers prescribed in subdivisions (i) through (iii) of this subparagraph, the net weight of the Arue, Pollock, Simmonds, Hardee, Nadir, Trapp, Peterson, Waldin, Pinelli, Tonnage, Booth 8, Black Prince, Blair, Booth 7, Booth 10, Collinson, Lula, Booth 5, Hickson, Simpson, Vaca, Avon, Booth 11, Hall, Winslowson, Choquette, Herman, Monroe, Ajax (Booth 7-B), Booth 3, Taylor, Byars, Linda, Nabal, Wagner, Schmidt, and Itzamna varieties of avocados in any such container shall be not less than  $13\frac{1}{2}$  pounds and the net weight of all other varieties of avocados in any such container shall be not less than 13 pounds: *Provided*, That not to exceed 5 percent, by count, of the containers in any lot may fail to meet such applicable weight requirement.

(x) With respect to the containers prescribed in subdivisions (v) through (viii) of this subparagraph, the net weight of avocados of any variety other than the Fuchs variety in any such container shall be not less than  $11\frac{1}{2}$  pounds and the net weight of avocados of the Fuchs variety in any such container shall be not less than  $10\frac{1}{2}$  pounds: *Provided*, That, when such containers are packed with more than 16 avocados of any variety other than the Fuchs variety, the net weight of such avocados shall be not less than 11 pounds, and *Provided further*, That not to exceed 5 percent, by count, of the containers in any lot may fail to meet such applicable weight requirement.

The provisions of this amendment shall become effective at 12:01 a.m., e.s.t., July 18, 1960.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: July 14, 1960.

FLOYD F. HEDLUND,  
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 60-6699; Filed, July 15, 1960; 8:52 a.m.]

[Milk Order No. 80]

## PART 980—MILK IN WESTERN COLORADO MARKETING AREA

### Order Amending Order

Sec. 980.0 Findings and determinations.

#### DEFINITIONS

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980.100 Agents.  
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**AUTHORITY:** §§ 980.0 to 980.101 issued under Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

### § 980.0 Findings and determinations.

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Western Colorado marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(3) The said order as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

(4) All milk and milk products handled by handlers, as defined in the order as hereby amended, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(5) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 5 cents per hundredweight or such amount not to exceed 5 cents per hundredweight as the Secretary may prescribe, with respect to (a) receipts of producer milk, including handlers' own production and (b) other source milk allocated to Class I pursuant to § 980.46.

(b) *Additional findings.* It is necessary in the public interest to make this order amending the order effective not later than August 1, 1960. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the marketing area.

The provisions of the said order are known to handlers. The recommended decision of the Deputy Administrator of the Agricultural Marketing Service was issued June 20, 1960, and the decision of the Assistant Secretary containing all amendment provisions of this order, was issued June 30, 1960. The changes effected by this order will not require extensive preparation or substantial alteration in method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending the order effective August 1, 1960, and that it would be contrary to the public interest to delay the effective date of this amendment for 30 days after its publication in the FEDERAL REGISTER.

(See section 4(c), Administrative Procedure Act, 5 U.S.C. 1001-1011)

(c) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order, amending the order, is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order as hereby amended; and

(3) The issuance of the order amending the order is approved or favored by at least three-fourths of the producers who during the determined representative period were engaged in the production of milk for sale in the marketing area.

*It is ordered,* That the complete text of the order, as hereby amended, be published in the FEDERAL REGISTER.

*Order relative to handling.* It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Western Colorado marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as hereby amended, and the aforesaid order is hereby amended to read as follows:

### DEFINITIONS

#### § 980.1 Act.

"Act" means Public Act No. 10, 73d Congress, as amended, and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.).

#### § 980.2 Secretary.

"Secretary" means the Secretary of Agriculture of the United States or any other officer or employee of the United States authorized to exercise the powers or to perform the duties of the said Secretary of Agriculture.

#### § 980.3 Department.

"Department" means the United States Department of Agriculture or such other

Federal agency as is authorized to perform the price reporting functions specified in this part.

#### § 980.4 Person.

"Person" means any individual, partnership, corporation, association or any other business unit.

#### § 980.5 Cooperative association.

"Cooperative association" means any cooperative association of producers which the Secretary determines to be qualified under the provisions of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act."

#### § 980.6 Western Colorado marketing area.

"Western Colorado marketing area" hereinafter called "marketing area" means all the territory within the outer boundaries of the counties of Delta, Mesa, and Montrose, all in the State of Colorado.

#### § 980.7 Fluid milk plant.

"Fluid milk plant" means any milk processing or packaging plant from which Class I milk is disposed of under a Grade A label on route(s) in the marketing area during the month.

#### § 980.8 Nonfluid milk plant.

"Nonfluid milk plant" means any milk plant other than a fluid milk plant.

#### § 980.9 Producer.

"Producer" means any person, other than a producer-handler, who produces milk in compliance with the Grade A inspection requirements of a duly constituted health authority having jurisdiction within the marketing area and whose milk is (a) received at a fluid milk plant or (b) diverted from a fluid milk plant to a nonfluid milk plant for the account of the operator of a fluid milk plant: *Provided,* That milk so diverted shall be deemed to have been received by the diverting handler at the plant from which it was diverted.

#### § 980.10 Producer-handler.

"Producer-handler" means a person who operates both a dairy farm(s) and a milk processing or bottling plant at which each of the following conditions are met during the month:

(a) Milk is received from the dairy farm(s) of such person but from no other dairy farm;

(b) Fluid milk products are disposed of on routes to retail or wholesale outlets in the marketing area; and

(c) The butterfat or skim milk disposed of in the form of fluid milk products does not exceed the butterfat or skim milk, respectively, received in the form of milk from the dairy farm(s) of such person and in the form of a fluid milk product from fluid milk plants of other handlers.

#### § 980.11 Handler.

"Handler" means any person in his capacity as the operator of a fluid milk plant.

**§ 980.12 Producer milk.**

"Producer milk" means all skim milk and butterfat contained in milk produced by a producer and received at a fluid milk plant directly from producers or diverted pursuant to § 980.9.

**§ 980.13 Other source milk.**

"Other source milk" means all skim and butterfat contained in:

- (a) Receipts during the delivery period of fluid milk products except (1) fluid milk products received from fluid milk plants, or (2) producer milk; and
- (b) Products, other than fluid milk products, from any source including those produced at the plant which are reprocessed or converted to another product in the plant during the month.

**§ 980.14 Fluid milk products.**

"Fluid milk products" means milk, skim milk, buttermilk, flavored milk, flavored milk drinks, cream (sweet or sour, including any mixture of cream and milk or skim milk), and concentrated (fresh or frozen) milk, flavored milk or flavored milk drinks which are neither sterilized nor in hermetically sealed cans.

**§ 980.15 Route.**

"Route" means any delivery to retail or wholesale outlets (including a sale from a plant or plant store) of a fluid milk product other than a delivery to any milk processing plant.

**MARKET ADMINISTRATOR****§ 980.20 Designation.**

The agency for the administration of this part shall be a market administrator, selected by the Secretary, who shall be entitled to such compensation as may be determined by, and shall be subject to removal at, the discretion of the Secretary.

**§ 980.21 Powers.**

The market administrator shall have the following powers with respect to this part:

- (a) To administer its terms and provisions;
- (b) To receive, investigate, and report to the Secretary complaints of violations;
- (c) To make rules and regulations to effectuate its terms and provisions; and
- (d) To recommend amendments to the Secretary.

**§ 980.22 Duties.**

The market administrator shall perform all duties necessary to administer the terms and provisions of this part, including but not limited to the following:

- (a) Within 45 days following the date on which he enters upon his duties, or such lesser period as may be prescribed by the Secretary, execute and deliver to the Secretary a bond, effective as of the date upon which he enters upon such duties, in an amount and with surety thereon satisfactory to the Secretary;
- (b) Employ and fix the compensation of such persons as may be necessary to enable him to administer the terms and provisions of this part;

(c) Obtain a bond in a reasonable amount and with reasonable surety thereon covering each employee who handles funds entrusted to the market administrator;

(d) Pay out of the funds provided by § 980.84 the cost of his bond and those of his employee, his own compensation, and all other expenses (except those incurred under § 980.83) necessarily incurred by him in the maintenance and functioning of his office and in the performance of his duties;

(e) Keep such books and records as will clearly reflect the transactions provided for by this part, and, upon request by the Secretary, surrender the same to such other person as the Secretary may designate;

(f) Submit his books and records to examination by the Secretary and furnish such information and reports as may be requested by the Secretary;

(g) Verify all reports and payments by each handler by audit of such handler's records and of the records of any other handler or person upon whose utilization the classification of skim milk or butterfat for such handler depends, and by such investigation as the market administrator deems necessary;

(h) Publicly announce at his discretion, unless otherwise directed by the Secretary by posting in a conspicuous place in his office and by such other means as he deems appropriate, the name of any person who, within 10 days after the date upon which he is required to perform such acts, has not made (1) reports pursuant to §§ 980.30 to 980.32, or (2) payments pursuant to § 980.80, § 980.82, § 980.83, or § 980.84;

(i) Publicly announced by posting in a conspicuous place in his office and by such other means as he deems appropriate the prices determined for each month as follows:

(1) On or before the 6th day of each month, the minimum price for Class I milk computed pursuant to § 980.51(a) and the Class I butterfat differential computed pursuant to § 980.52(a), both for the current month;

(2) On or before the 6th day of each month the minimum price for Class II milk computed pursuant to § 980.51(b) and the Class II butterfat differential computed pursuant to § 980.52(b) each for the previous month; and

(3) On or before the 10th day after the end of each month the uniform price for each handler computed pursuant to § 980.72 and the producer butterfat differential computed pursuant to § 980.81.

(j) On or before the 10th day after the end of each month, mail to each handler at his last known address, a statement showing the amount and value of producer milk in each class and the totals thereof; and

(k) Prepare and make available for the benefit of producers, consumers, and handlers such general statistics and such information concerning the operations hereof as are necessary and appropriate to the proper functioning of this part and which do not reveal confidential information.

**REPORTS, RECORDS, AND FACILITIES****§ 980.30 Reports of receipts and utilization.**

On or before the 7th day after the end of each month each handler, except a producer-handler, shall report to the market administrator, in the detail and on forms prescribed by the market administrator, the receipts and utilization at his fluid milk plant(s) for such month, as follows:

(a) The quantities and butterfat content of producer milk received (including such handler's own farm production);

(b) The quantities of fluid milk products, with the butterfat content thereof, received from fluid milk plants of other handlers;

(c) The quantities of other source milk, with butterfat content thereof, received;

(d) The quantities and butterfat content of inventories of fluid milk products on hand at the beginning and end of the month;

(e) The utilization of all receipts of milk and milk products; and

(f) Such other information with respect to all receipts and utilization as the market administrator may prescribe.

**§ 980.31 Payroll reports.**

On or before the 20th day of each month each handler shall submit to the market administrator his producer payroll for the preceding month which shall show (a) the total pounds of milk received from each producer and the average butterfat test of milk received, (b) the number of days on which milk was received from each producer, (c) the amount of payment to each producer or cooperative association, (d) the nature and amount of any deductions or charges involved in such payments, and (e) such other information with respect thereto as the market administrator may request.

**§ 980.32 Other reports.**

Each producer-handler shall make reports to the market administrator at such time and in such manner as the market administrator may prescribe.

**§ 980.33 Records and facilities.**

Each handler shall maintain and make available to the market administrator or to his representative, during the usual hours of business, such accounts and records of his operations and such facilities as are necessary for the market administrator to verify, or establish the correct data with respect to:

(a) The receipts and utilization of all producer milk, milk and milk products from other handlers, and other source milk;

(b) The weights and tests for butterfat and other content of all milk and milk products handled;

(c) Payments to producers or to cooperative associations; and

(d) The pounds of milk and milk products, with butterfat content, on hand at the beginning and end of each month.

**§ 980.34 Retention of records.**

All books and records required under this part to be made available to the market administrator shall be retained by the handler for a period of three years to begin at the end of the month to which such books and records pertain: *Provided*, That if, within such three-year period, the market administrator notifies the handler in writing that the retention of such books and records, or of specified books and records is necessary in connection with a proceeding under section 8c(15) (A) of the act or a court action specified in such notice, the handler shall retain such books and records, or specified books and records, until further written notification from the market administrator. In either case the market administrator shall give further written notification to the handler promptly, upon the termination of the litigation or when the records are no longer necessary in connection therewith.

**CLASSIFICATION****§ 980.40 Skim milk and butterfat to be classified.**

All skim milk and butterfat at fluid milk plants which is required to be reported for the month pursuant to § 980.30, shall be classified by the market administrator pursuant to the provisions of §§ 980.41 to 980.46.

**§ 980.41 Classes of utilization.**

Subject to the conditions set forth in §§ 980.43 and 980.44, the classes of utilization shall be as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat (1) disposed of in the form of fluid milk products except those classified pursuant to paragraph (b) (3) and (4) of this section, or (2) not specifically accounted for as Class II utilization.

(b) *Class II milk.* Class II milk shall be all the skim milk and butterfat: (1) used to produce any product other than a fluid milk product, (2) in inventory of fluid milk products on hand at the end of the month, (3) accounted for as livestock feed, (4) in skim milk dumped after prior notification to and opportunity for verification by the market administrator, (5) in shrinkage not to exceed 2 percent of skim milk and butterfat received directly from producers, and (6) in shrinkage of other source milk.

**§ 980.42 Shrinkage.**

The market administrator shall allocate shrinkage over receipts at fluid milk plant(s) of each handler as follows:

(a) Compute the shrinkage of skim milk and butterfat; and

(b) Assign the remaining amounts pro rata to the handler's receipts, respectively, in milk received directly from producers and in other source milk.

**§ 980.43 Responsibility of handlers and reclassification of milk.**

(a) All skim milk and butterfat shall be Class I unless the handler who first receives such skim milk or butterfat can prove to the market administrator that such skim milk or butterfat should be classified as Class II milk.

(b) Any skim milk or butterfat shall be reclassified if verification by the market administrator discloses that the original classification was incorrect.

**§ 980.44 Transfers.**

Skim milk and butterfat disposed of each month from a fluid milk plant shall be classified:

(a) As Class I milk, if transferred in the form of a fluid milk product to a fluid milk plant of another handler, except a producer-handler, unless utilization in another class is claimed by both handlers in their reports submitted for the month to the market administrator pursuant to § 980.30 subject in either event to the following conditions:

(1) The receiving plant has utilized in such class an equivalent amount of skim milk and butterfat, respectively; and

(2) Such skim milk and butterfat shall be classified so as to allocate to producer milk the greatest possible total Class I utilization in the two plants;

(b) As Class I milk, if transferred to a producer-handler in the form of a fluid milk product;

(c) As Class I milk, if transferred or diverted in the form of milk, skim milk or cream in bulk to a nonfluid milk plant located more than 350 miles from the City Hall in Grand Junction, Colorado, by the shortest highway distance as determined by the market administrator;

(d) As Class I milk, if transferred or diverted in the form of milk, skim milk or cream in bulk to a nonfluid milk plant located not more than 350 miles from the City Hall in Grand Junction, Colorado, by the shortest highway distance as determined by the market administrator, unless the following conditions are met:

(1) The transferring-handler claims Class II utilization in a product specified in § 980.41(b);

(2) The operator of such nonfluid milk plant keeps adequate books and records showing the utilization of all skim milk and butterfat received at such plant and the market administrator is permitted to examine such books and records for the purpose of verification; and

(3) Not less than an equivalent amount of skim milk and butterfat was actually used as Class II in such transferor's plant;

(e) If any skim milk or butterfat is transferred to a second nonfluid milk plant under paragraph (d) of this section, the same conditions of audit, classification and allocation shall apply.

**§ 980.45 Computation of the skim milk and butterfat in each class.**

For each month, the market administrator shall correct for mathematical and for other obvious errors the reports of receipts and utilization for the fluid milk plant(s) of each handler and shall compute the pounds of butterfat and skim milk in Class I milk, and Class II milk for such handler: *Provided*, That if any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk disposed of in such product shall be considered to be an amount equivalent to the nonfat dry milk solids

contained in such product, plus all of the water originally associated with such solids.

**§ 980.46 Allocation of skim milk and butterfat classified.**

After making the computations pursuant to § 980.45 the market administrator shall determine the classification of milk received from producers of fluid milk plant(s) of each handler as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class II the pounds of skim milk allocated to shrinkage in skim milk received from producers pursuant to § 980.41(b)(5);

(2) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in other source milk other than that subtracted pursuant to subparagraph (3) of this paragraph;

(3) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in other source milk received from a plant at which the handling of milk is fully subject to the pricing and payment provisions of another marketing agreement and order issued pursuant to the Act;

(4) Subtract from the pounds of skim milk remaining in each class, the pounds of skim milk received from other fluid milk plants according to its classification as determined pursuant to § 980.44(a);

(5) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk contained in inventory of fluid milk products on hand at the beginning of the month;

(6) Add to the pounds of skim milk remaining in Class II the pounds of skim milk subtracted pursuant to subparagraph (1) of this paragraph; and

(7) Subtract from the pounds of skim milk remaining in each class any amount by which the pounds of skim milk remaining in both classes exceed the pounds of skim milk in milk received from producers in series beginning with Class II. Such excess shall be called "overage".

(b) Butterfat shall be allocated in accordance with the same procedure outlined for skim milk in paragraph (a) of this section.

(c) Determine the weighted average butterfat content of each class of milk computed pursuant to paragraphs (a) and (b) of this section.

**MINIMUM PRICES****§ 980.50 Basic formula price.**

The basic formula price for each month to be used in determining the class prices set forth in § 980.51 shall be the higher of the prices computed pursuant to paragraphs (a) and (b) of this section rounded to the nearest one-tenth cent:

(a) The average of the basic or field prices paid or to be paid per hundred-weight for milk of 3.5 percent butterfat content received from farmers during the month at the following plants or

places for which prices have been reported to the Department:

*Present Operator and Location*

Borden Co., Mount Pleasant, Mich.  
Carnation Co., Sparta, Mich.  
Pet Milk Co., Wayland, Mich.  
Pet Milk Co., Coopersville, Mich.  
Borden Co., Orfordville, Wis.  
Borden Co., New London, Wis.  
Carnation Co., Richland Center, Wis.  
Carnation Co., Oconomowoc, Wis.  
Pet Milk Co., New Glarus, Wis.  
Pet Milk Co., Belleville, Wis.  
White House Milk Co., Manitowoc, Wis.  
White House Milk Co., West Bend, Wis.

(b) The price per hundredweight computed by adding together the plus values pursuant to subparagraphs (1) and (2) of this paragraph:

(1) From the simple average, as computed by the market administrator, of the daily wholesale selling prices (using the midpoint of any price range as one price) per pound of Grade A (92-score) bulk creamery butter per pound at Chicago, as reported by the Department during the month, subtract 3 cents, add 20 percent thereof, and multiply by 3.5.

(2) From the simple average, as computed by the market administrator, of the weighted averages of carlot prices per pound of nonfat dry milk, spray and roller process, respectively, for human consumption, f.o.b. manufacturing plants in the Chicago area, as published for the period from the 26th day of the immediately preceding month through the 25th day of the current month by the Department, deduct 5.5 cents, multiply by 8.5, and then multiply by 0.965.

**§ 980.51 Class prices.**

Subject to the provisions of §§ 980.52 and 980.53 the minimum prices per hundredweight to be paid by each handler for milk received at his fluid milk plant from producers during the month shall be as follows:

(a) *Class I milk.* The basic formula price for the preceding month plus \$2.05.

(b) *Class II milk.* The basic formula price for the current month.

**§ 980.52 Butterfat differential to handlers.**

For milk containing more or less than 3.5 percent butterfat, the class prices pursuant to § 980.51 shall be increased or decreased, respectively, for each one-tenth of one percent of butterfat by multiplying the simple average, as computed by the market administrator, of the daily wholesale calling price per pound (using the midpoint of any price range as one price) of Grade A (92-score) bulk creamery butter at Chicago as reported by the Department during the month by the applicable factor specified below, and rounding to the nearest one-tenth cent.

(a) *Class I milk.* Multiply such price for the preceding month by 0.135; and

(b) *Class II milk.* Multiply such price for the current month by 0.120.

**§ 980.53 Location differentials to handlers.**

For milk which is received from producers at a fluid milk plant located more than 100 miles by the shortest

highway distance, as determined by the market administrator, from the Courthouse in Grand Junction, Colorado, and which is classified as Class I milk the price computed pursuant to § 980.51(a) shall be reduced by 15 cents if such plant is located more than 100 miles but not more than 110 miles from such Courthouse and by an additional 1.5 cents for each 10 miles or fraction thereof that such distance exceeds 110 miles; *Provided*, That for the purpose of calculating such differential transfers between fluid milk plants shall be assigned to Class I milk in a volume not in excess of that by which Class I disposition at the transferee plant exceeds the receipts from producers at such plants, such assignment to transferor plants to be made first to plants at which no differential credit is applicable and then in the sequence beginning with the plant at which the lowest location differential credit would apply.

**§ 980.54 Use of equivalent prices.**

If for any reason a price specified by this part for computing class prices or for other purposes is not available in the manner described in this part, the market administrator shall use a price determined by the Secretary to be equivalent to the price which is specified.

**APPLICATION OF PROVISIONS**

**§ 980.60 Handler exemption.**

Sections 980.40 to 980.46, 980.50 to 980.53, 980.70 to 980.72 and 980.80 to 980.85 shall not apply to a producer-handler or to a handler operating a fluid milk plant from which an average of less than 200 pounds per day of Class I milk is disposed of on routes in the marketing area.

**§ 980.61 Plants subject to other Federal orders.**

Milk received at the plant of a handler at which the handling of milk is fully subject during the month to the pricing and payment provisions of another marketing agreement or order issued pursuant to the act and from which the disposition of Class I milk in the other Federal marketing area exceeds that in the Western Colorado marketing area shall be exempted for such month from all provisions of this part except that the handler operating such plant shall make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

**DETERMINATION OF UNIFORM PRICE**

**§ 980.70 Net obligation of handlers.**

The net obligation of each handler for producer milk received at his fluid milk plant(s) during each month shall be a sum of money computed by the market administrator as follows:

(a) Multiply the pounds of such milk in each class by the applicable class price and add together the resulting amounts;

(b) Add the amount computed by multiplying pounds of overage deducted from each class pursuant to § 980.46 (a) (7) and the corresponding step of

§ 980.46 (b) by the applicable class price;

(c) Add a reclassification charge equal to the difference between the Class I price value for the current month and the price value applicable to closing inventory for the preceding month for the skim milk and butterfat subtracted from Class I pursuant to § 980.46(a) (5) and the corresponding step of § 980.46(b) which is not in excess of the skim milk and butterfat remaining in Class II in the previous month pursuant to § 980.46 (a) (5) and the corresponding step of § 980.46(b); and

(d) Add or subtract, as the case may be, an amount necessary to correct errors discovered by the market administrator in the verification of reports of such handler of his receipts and utilization of skim milk and butterfat for previous months.

**§ 980.71 Computation of aggregate value used to determine uniform prices.**

For each month the market administrator shall compute an aggregate value for each handler from which to determine the uniform price per hundred weight for producer milk of 3.5 percent butterfat content as follows:

(a) Add to the amount computed pursuant to § 980.70 the total of the location differentials to be made pursuant to § 980.81(b).

(b) Add or subtract from the amount computed pursuant to § 980.70 for each one-tenth percent that the average butterfat content or producer milk received by such handler is less or more, respectively, than 3.5 percent, an amount computed by multiplying such difference by the butterfat differential to producers, as determined pursuant to § 980.81(a) and multiplying the result by the total hundredweight of producer milk; and

(c) Add the amount represented by any deductions made for eliminating fractions of a cent in computing the uniform price for such handler for the preceding month.

**§ 980.72 Computation of uniform prices for handlers.**

The market administrator shall compute a uniform price for producer milk received by each handler as follows: Divide the aggregate value computed pursuant to § 980.71 by the total hundredweight of producer milk received by such handler. The result, less any fraction of a cent, shall be known as the uniform price for such handler for milk of 3.5 percent butterfat content, at a fluid milk plant f.o.b. marketing area.

**PAYMENTS**

**§ 980.80 Payments to producers.**

Except as provided in paragraph (c) of this section, each handler shall make payment to each producer for milk received from such producer as follows:

(a) On or before the 28th day of the month, to each producer who had not discontinued shipping milk to such handler before the 18th day of the month, an advance payment with respect to milk received during the first 15 days of the month at the Class II price for the preceding month.

(b) On or before the 15th day after the end of each month, for milk received during such month, an amount computed at not less than the uniform price per hundredweight pursuant to § 980.72 subject to the butterfat and location differentials computed pursuant to § 980.81; plus or minus adjustments for errors made in previous payments to such producer; and less (1) payment made pursuant to paragraph (a) of this section, (2) marketing service deductions pursuant to § 980.83 and (3) proper deduction authorized in writing by such producer;

(c) (1) Upon receipt of a written request from a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk and receipt of a written promise to reimburse the handler the amount of any actual loss incurred by him because of any improper claim on the part of the cooperative association each handler shall pay to the cooperative association on or before the 13th and 26th day of each month in lieu of payments pursuant to paragraphs (a) and (b) respectively, of this section an amount equal to the sum of the individual payments otherwise payable to such producers. The foregoing payment shall be made with respect to milk of each producer whom the cooperative association certifies is a member effective on and after the first day of the calendar month next following receipt of such certification through the last day of the month next preceding receipt of notice from the cooperative association of a termination of membership or until the original request is rescinded in writing by the cooperative association.

(2) A copy of each such request, promise to reimburse and certified list of members shall be filed simultaneously with the market administrator by the cooperative association and shall be subject to verification at his discretion, through audit of the records of the cooperative association pertaining thereto. Exceptions, if any, to the accuracy of such certification by a producer claimed to be a member, or by a handler, shall be made by written notice to the market administrator and shall be subject to his determination.

(d) In making the payments to producers pursuant to paragraphs (b) and (c) of this section, each handler shall furnish each producer or cooperative association from whom he has received milk with a supporting statement which shall show for each month:

(1) The month and the identity of the handler and of the producer;

(2) The total pounds and the average butterfat content of milk received from such producer;

(3) The minimum rate or rates at which payment to such producer is required pursuant to this part;

(4) The rate which is used in making the payment if such rate is other than the applicable minimum rate;

(5) The amount or the rate per hundredweight and nature of each deduction claimed by the handler; and

(6) The net amount of payment to such producer.

#### § 980.81 Producers differentials.

(a) *Butterfat differential.* The applicable uniform prices to be paid pursuant to § 980.80 to producers delivering milk to each handler shall be increased or decreased for each one-tenth of one percent which the butterfat content of his milk is above or below 3.5 percent, respectively, by a butterfat differential equal to the average of the butterfat differentials determined pursuant to paragraphs (a) and (b) of § 980.52, weighted by the pounds of butterfat in producer milk used by such handler in each class and the result rounded to the nearest tenth of a cent.

(b) *Location differential.* For milk which is received from producers at an approved plant located more than 100 miles by the shortest highway distance, as determined by the market administrator, from the Courthouse in Grand Junction, Colorado, there shall be deducted 15 cents per hundredweight of milk if such plant is located more than 100 miles but not more than 110 miles from such Courthouse, and an additional 1.5 cents for each 10 miles or fraction thereof that such distance exceeds 110 miles.

#### § 980.82 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts, or verification of weights and butterfat tests of milk or milk products discloses errors resulting in money due a producer or the market administrator from such handler or due such handler from the market administrator, the market administrator shall notify such handler of any amount so due, and payment thereof shall be made on or before the next date for making payments, as set forth in the provisions under which such error occurred.

#### § 980.83 Marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers for milk (other than milk of his own production) pursuant to § 980.80, shall deduct 6 cents per hundredweight, or such amount not exceeding 6 cents per hundredweight, as may be prescribed by the Secretary, and shall pay such deductions to the market administrator on or before the 15th day after the end of the month. Such money shall be used by the market administrator to provide market information and to check the accuracy of the testing and weighing of their milk for producers who are not receiving such service from a cooperative association;

(b) In the case of producers who are members of a cooperative association which the Secretary has determined is actually performing the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deduction specified in paragraph (a) of this section, such deductions from the payments to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers, and on or before the 15th day after the end of each month and pay such deductions to the coopera-

tive association of which such producers are members, furnishing a statement showing the amount of any such deductions and the amount of milk for which such deduction was computed for each producer.

#### § 980.84 Expense of administration.

As his pro rata share of the expense of administration of this part, each handler shall pay to the market administrator on or before the 15th day after the end of the month, 5 cents per hundredweight, or such amount not exceeding 5 cents per hundredweight as the Secretary may prescribe, with respect to all (a) receipts of producer milk, including such handlers' own production; and (b) other source milk at a fluid milk plant which is allocated to Class I milk pursuant to § 980.46.

#### § 980.85 Termination of obligations.

The provisions of this section shall apply to any obligation under this part for the payment of money.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate two years after the last day of the calendar month during which the market administrator receives the handler's utilization report on the milk involved in such obligation unless within such two-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain, but need not be limited to, the following information:

(1) The amount of the obligation;

(2) The month(s) during which the milk with respect to which the obligation exists, was received or handled; and

(3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(b) If a handler fails or refuses, with respect to any obligation under this part, to make available to the market administrator or his representatives all books and records required by this part to be made available, the market administrator may, within the two-year period provided for in paragraph (a) of this section, notify the handler in writing of such failure or refusal. If the market administrator so notifies a handler, the said two-year period with respect to such obligation shall not begin to run until the first day of the calendar month following the month during which all such books and records pertaining to such obligation are made available to the market administrator or his representatives.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a handler's obligation under this part to pay money shall not be terminated with respect to any transaction involving fraud or willful concealment of a fact, material to the obligation, on the part of the handler against whom the obligation is sought to be imposed.

## RULES AND REGULATIONS

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate two years after the end of the calendar month during which the milk involved in the claim was received if an underpayment is claimed or two years after the end of the calendar month during which the payment (including deduction or set-off by the market administrator) was made by the handler if a refund on such payment is claimed unless such handler within the applicable period of time, files pursuant to section 8c(15) (A) of the act, a petition claiming such money.

## EFFECTIVE TIME, SUSPENSION OR TERMINATION

## § 980.90 Effective time.

The provisions of this part or any amendment to this part shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated pursuant to § 980.91.

## § 980.91 Suspension or termination.

The Secretary may suspend or terminate this part or any provisions of this part whenever he finds this part or any provision of this part obstructs or does not tend to effectuate the declared policy of the act. This part shall terminate in any event whenever the provisions of the act authorizing it cease to be in effect.

## § 980.92 Continuing obligations.

If, upon the suspension or termination of any or all provisions of this part, there are any obligations thereunder, the final accrual or ascertainment of which requires further acts by any person (including the market administrator), such further acts shall be performed notwithstanding such suspension or termination.

## § 980.93 Liquidation.

Upon the suspension or termination of the provisions of this part, except this section, the market administrator, or such liquidating agent as the Secretary may designate, shall, if so directed by the Secretary, liquidate the business of the market administrator's office, dispose of all property in his possession or control, including accounts receivable, and execute and deliver all assignments or other instruments necessary or appropriate to effectuate any such disposition. If a liquidating agent is so designated, all assets, books and records of the market administrator shall be transferred promptly to such liquidating agent. If, upon such liquidation, the funds on hand exceed the amounts required to pay outstanding obligations of the office of the market administrator and to pay necessary expenses of liquidating and distribution, such excess shall be distributed to contributing handlers and producers in an equitable manner.

## MISCELLANEOUS PROVISIONS

## § 980.100 Agents.

The Secretary may, by designation in writing, name any officer or employee of the United States to act as his agent or representative in connection with any of the provisions of this part.

## § 980.101 Separability of provisions.

If any provision of this part or its application to any person or circumstances is held invalid the application of such provision and of the remaining provisions of this part, to other persons or circumstances, shall not be affected thereby.

Issued at Washington, D.C., this 12th day of July 1960, to be effective on and after the 1st day of August 1960.

CLARENCE L. MILLER,  
Assistant Secretary.

[F.R. Doc. 60-6619; Filed, July 15, 1960;  
8:47 a.m.]

Title 6—AGRICULTURAL  
CREDIT

## Chapter III—Farmers Home Administration, Department of Agriculture

## SUBCHAPTER A—GENERAL REGULATIONS

[FHA Instruction 426.1]

PART 306—REAL PROPERTY  
INSURANCEWaiver of Evidence of Premium  
Payment

Section 306.2(g), Title 6, Code of Federal Regulations (21 F.R. 7509), is revised to modify the requirement, subject to certain conditions, that evidence of premium payment must be furnished when Form FHA-878, "Property Insurance Mortgage Clause (Without Contribution)," is not used, and to read as follows:

## § 306.2 Companies and policies.

(g) *Evidence of premium payment.*  
(1) When Form FHA-878 is attached to the policy, no evidence of premium or assessment payment is required.

(2) When a mortgage clause other than Form FHA-878 is used, the borrower will be required to furnish, with the policy, proper evidence that the premium has been paid for the full term of the policy. The evidence of premium payment may be a receipted bill, the policy stamped "Premium Paid," the endorsement renewing or continuing the policy stamped "Premium Paid" or letter or statement signed by the agent or company stating the premium has been paid. In case the policy is written by an assessment mutual insurance company on an annual assessment basis, proper evidence will accompany the policy to show that the most recent annual assessment has been paid. When Form FHA-878 cannot be used in a state, evidence of premium payments may be waived upon determination by the National Office of

the probability that the Government will not be required to pay defaulted premiums.

(Sec. 41, 50 Stat. 528, as amended, sec. 510, 63 Stat. 437, sec. 10, 68 Stat. 735; 7 U.S.C. 1015, 42 U.S.C. 1480, 16 U.S.C. 590x-3; Order of Acting Sec. of Agr., 19 F.R. 74, 22 F.R. 8188)

Dated July 12, 1960.

H. C. SMITH,  
Acting Administrator,  
Farmers Home Administration.

[F.R. Doc. 60-6627; Filed, July 15, 1960;  
8:48 a.m.]

Title 14—AERONAUTICS AND  
SPACE

## Chapter III—Federal Aviation Agency

SUBCHAPTER E—AIR NAVIGATION  
REGULATIONS

[Airspace Docket No. 59-FW-58]

PART 600—DESIGNATION OF  
FEDERAL AIRWAYS

## Modification of Federal Airway

On January 6, 1960, a Notice of Proposed Rule Making was published in the FEDERAL REGISTER (25 F.R. 82) stating that the Federal Aviation Agency proposed to modify VOR Federal airway No. 1522 between Anniston, Ala., and Royston, Ga.

No adverse comments were received regarding the proposed amendment.

Interested persons have been afforded an opportunity to participate in the making of the rule herein adopted, and due consideration has been given to all relevant matter presented.

The substance of the proposed amendment having been published, therefore, pursuant to the authority delegated to me by the Administrator (24 F.R. 4530) and for the reasons stated in the Notice, the following action is taken:

In the text of § 600.6622 (24 F.R. 10529, 9927) "intersection of the Anniston omnirange 084° True and the Atlanta Airport ILS localizer west course; Atlanta, Ga., Airport ILS localizer; intersection of the Atlanta Airport ILS localizer east course and the Atlanta, Ga., omnirange 048° True radial; intersection of the Atlanta omnirange 048° True and the Royston omnirange 236° True radials; Royston, Ga., omnirange station;" is deleted and "INT of the Anniston VOR 099° True and the Atlanta, Ga., VORTAC 267° True radials; Atlanta VORTAC; Royston, Ga., VOR;" is substituted therefor.

These amendments shall become effective 0001 e.s.t., September 22, 1960.

(Secs. 307(a), 313(a), 72 Stat. 749, 752; 49 U.S.C. 1348, 1354)

Issued in Washington, D.C., on July 11, 1960.

D. D. THOMAS,  
Director, Bureau of  
Air Traffic Management.

[F.R. Doc. 60-6606; Filed, July 15, 1960;  
8:45 a.m.]

[Airspace Docket No. 60-NY-34]

**PART 600—DESIGNATION OF  
FEDERAL AIRWAYS****PART 601—DESIGNATION OF THE  
CONTINENTAL CONTROL AREA,  
CONTROL AREAS, CONTROL  
ZONES, REPORTING POINTS, AND  
POSITIVE CONTROL ROUTE SEG-  
MENTS****Designation, Modification and Revo-  
cation of Federal Airways and As-  
sociated Control Areas**

On April 19, 1960, a Notice of Proposed Rule Making was published in the FEDERAL REGISTER (25 F.R. 3379) stating that the Federal Aviation Agency proposed to designate VOR Federal airway No. 475, and its associated control areas, from a VOR to be installed approximately March 1, 1960, near Deer Park, N.Y., to the Putnam, Conn., VORTAC via a VOR to be installed approximately March 1, 1961, near New Haven, Conn., including an east alternate from the New Haven VOR to the Putnam VORTAC via the Norwich, Conn., VORTAC; to extend VOR Federal airway No. 140 and its associated control areas from the Idlewild, N.Y., VORTAC to the Deer Park VOR; and to revoke in its entirety VOR Federal airway No. 463 and its associated control areas. Subsequent to the publication of the Notice, the commissioning date of the Deer Park VOR was rescheduled to March 1, 1961.

No adverse comments were received regarding the proposed amendments.

Interested persons have been afforded an opportunity to participate in the making of the rules herein adopted, and due consideration has been given to all relevant matter presented.

The substance of the proposed amendments having been published, therefore, pursuant to the authority delegated to me by the Administrator (24 F.R. 4530) and for the reasons stated in the Notice, Parts 600 (24 F.R. 10487) and 601 (24 F.R. 10530) and §§ 600.6140 (24 F.R. 10517, 10876, 25 F.R. 630, 5874) and 601.6140 (24 F.R. 10601, 10876) are amended as follows:

**§ 600.6140 [Amendment]**

1. Section 600.6140 VOR Federal airway No. 140 (Amarillo, Tex., to New York, N.Y.):

(a) In the caption "(Amarillo, Tex. to New York, N.Y.)" is deleted and "(Amarillo, Tex., to Deer Park, N.Y.)" is substituted therefor.

(b) In the text "to the Idlewild, N.Y., VOR." is deleted and "Idlewild, N.Y., VORTAC; to the Deer Park, N.Y., VOR." is substituted therefor.

**§ 600.6463 [Revocation]**

2. Section 600.6463 VOR Federal airway No. 463 (Norwich, Conn., to Putnam, Conn.) is revoked.

3. Section 600.6475 is added to read:

**§ 600.6475 VOR Federal airway No. 475 (Deer Park, N.Y., to Putnam, Conn.).**

From the Deer Park, N.Y., VOR via the New Haven, Conn., VOR; to the

Putnam, Conn., VORTAC, including an E alternate from the New Haven VOR to the Putnam VORTAC via the Norwich, Conn., VORTAC.

**§ 601.6140 [Amendment]**

4. In § 601.6140 VOR Federal airway No. 140 control areas (Amarillo, Tex., to New York, N.Y.), the caption "(Amarillo, Tex., to New York, N.Y.)" is deleted and "(Amarillo, Tex., to Deer Park, N.Y.)" is substituted therefor.

**§ 601.6463 [Revocation]**

5. Section 601.6463 VOR Federal airway No. 463 control areas (Norwich, Conn., to Putnam, Conn.) is revoked.

6. Section 601.6475 is added to read:

**§ 601.6475 VOR Federal airway No. 475 control areas (Deer Park, N.Y., to Putnam, Conn.).**

All of VOR Federal airway No. 475 including an E alternate.

These amendments shall become effective 0001 e.s.t., April 6, 1961.

(Secs. 307(a), 313(a), 71 Stat. 749, 752; 49 U.S.C. 1348, 1354)

Issued in Washington, D.C., on July 11, 1960.

D. D. THOMAS,  
Director, Bureau of  
Air Traffic Management.

[F.R. Doc. 60-6607; Filed, July 15, 1960;  
8:45 a.m.]

[Airspace Docket No. 60-AN-8]

**PART 601—DESIGNATION OF THE  
CONTINENTAL CONTROL AREA,  
CONTROL AREAS, CONTROL  
ZONES, REPORTING POINTS, AND  
POSITIVE CONTROL ROUTE SEG-  
MENTS****Modification of Control Zone**

On May 7, 1960, a Notice of Proposed Rule Making was published in the FEDERAL REGISTER (25 F.R. 4088) stating that the Federal Aviation Agency proposed to modify the McGrath, Alaska, control zone by adding a control zone extension.

No adverse comments were received regarding the proposed amendments.

Interested persons have been afforded an opportunity to participate in the making of the rules herein adopted, and due consideration has been given to all relevant matter presented.

The substance of the proposed amendments having been published, therefore, pursuant to the authority delegated to me by the Administrator (24 F.R. 4530) and for the reasons stated in the Notice, the following actions are taken:

1. In Part 601 (24 F.R. 10530) § 601.2110 is added to read:

**§ 601.2110 McGrath, Alaska, Control Zone.**

Within a 5-mile radius of the geographical center of the McGrath Airport (latitude 62°57'05" N., longitude 155°36'10" W.), and within 2 miles either side of the McGrath RR SE course extending from the 5-mile radius zone to a point 12 miles SE of the RR.

**§ 601.1984 [Amendment]**

2. In the text of § 601.1984 (24 F.R. 10570) "McGrath, Alaska: McGrath Airport." is deleted.

These amendments shall become effective 0001 e.s.t., September 22, 1960.

(Secs. 307(a), 313(a), 72 Stat. 749, 752; 49 U.S.C. 1348, 1354)

Issued in Washington, D.C., on July 11, 1960.

D. D. THOMAS,  
Director, Bureau of  
Air Traffic Management.

[F.R. Doc. 60-6603; Filed, July 15, 1960;  
8:45 a.m.]

[Airspace Docket No. 60-AN-11]

**PART 601—DESIGNATION OF THE  
CONTINENTAL CONTROL AREA,  
CONTROL AREAS, CONTROL  
ZONES, REPORTING POINTS, AND  
POSITIVE CONTROL ROUTE SEG-  
MENTS****Modification of Control Zone**

On May 7, 1960, a Notice of Proposed Rule Making was published in the FEDERAL REGISTER (25 F.R. 4008) stating that the Federal Aviation Agency proposed to modify the Minchumina, Alaska, control zone by adding a control zone extension. No adverse comments were received regarding the proposed amendments.

Interested persons have been afforded an opportunity to participate in the making of the rules herein adopted, and due consideration has been given to all relevant matter presented.

The substance of the proposed amendments having been published, therefore, pursuant to the authority delegated to me by the Administrator (24 F.R. 4530) and for the reasons stated in the Notice, the following actions are taken:

1. In Part 601 (24 F.R. 10530) § 601.2290 is added to read:

**§ 601.2290 Minchumina, Alaska, control zone.**

Within a 5-mile radius of the geographical center of the Minchumina Airport (latitude 63°52'55" N., longitude 152°18'39" W.) and within 2 miles either side of the Minchumina RR SE course extending from the 5-mile radius zone to a point 12 miles SE of the RR.

**§ 601.1984 [Amendment]**

2. In the text of § 601.1984 (24 F.R. 10570) "Minchumina, Alaska: Minchumina Airport." is deleted.

These amendments shall become effective 0001 e.s.t., September 22, 1960.

(Secs. 307(a), 313(a), 72 Stat. 749, 752; 49 U.S.C. 1348, 1354)

Issued in Washington, D.C., on July 11, 1960.

D. D. THOMAS,  
Director, Bureau of  
Air Traffic Management.

[F.R. Doc. 60-6604; Filed, July 15, 1960;  
8:45 a.m.]

[Airspace Docket No. 60-AN-13]

# **PART 601—DESIGNATION OF THE CONTINENTAL CONTROL AREA, CONTROL AREAS, CONTROL ZONES, REPORTING POINTS, AND POSITIVE CONTROL ROUTE SEGMENTS**

## **Modification of Control Zone**

On May 7, 1960, a Notice of Proposed Rule Making was published in the *FEDERAL REGISTER* (25 F.R. 4087) stating that the Federal Aviation Agency proposed to modify the Nome, Alaska, control zone by adding a control zone extension.

No adverse comments were received regarding the proposed amendments.

Interested persons have been afforded an opportunity to participate in the making of the rules herein adopted, and due consideration has been given to all relevant matter presented.

The substance of the proposed amendments having been published, therefore, pursuant to the authority delegated to me by the Administrator (24 F.R. 4530) and for the reasons stated in the Notice, the following actions are taken:

1. In Part 601 (24 F.R. 10530) § 601.2212 is added to read:

§ 601.2212 Nome, Alaska, control zone.

Within a 5-mile radius of the geographical center of the Nome Federal Aviation Agency Airport (latitude 64°30'42" N., longitude 165°26'28" W.), and within 2 miles either side of the Nome RR E course extending from the 5-mile radius zone to a point 12 miles E of the RR.

§ 601.1984 [Amendment]

2. In the text of § 601.1984 (24 F.R. 10570) "Nome, Alaska: Nome Airport," is deleted.

These amendments shall become effective 0001 e.s.t., September 22, 1960.

(Secs. 307(a), 313(a), 72 Stat. 749, 752; 49 U.S.C. 1348, 1354)

Issued in Washington, D.C., on July 11, 1960.

D. D. THOMAS,  
Director, Bureau of  
Air Traffic Management.

[F.R. Doc. 60-6605; Filed, July 15, 1960; 8:45 a.m.]

[Airspace Docket No. 59-KC-55]

## **PART 608—RESTRICTED AREAS**

### **Modification**

The purpose of this amendment to § 608.24 of the regulations of the Administrator is to modify the Brookville, Kans., Restricted Area (R-196) (Salina Chart).

The presently designated altitudes of the Brookville, Kansas, Restricted Area (R-196) are surface to 50,000 feet MSL. A recent review indicates that 45,000 feet MSL would encompass all activity currently conducted within this area. These activities consist of bombing, air-to-ground and ground-to-air gunnery, demolition, and small arms firing. The Department of the Air Force concurs in

this adjustment of the designated altitudes.

Since this amendment reduces a burden on the public, compliance with the notice, public procedure, and effective date requirement of section 4 of the Administrative Procedure Act is unnecessary and it may be made effective immediately.

In consideration of the foregoing, the following action is taken:

In § 608.24 *Kansas*, the Brookville, Kansas, Restricted Area (R-196) (Salina Chart) (24 F.R. 524) is amended by deleting "Surface to 50,000 feet" and substituting therefor "Surface to 45,000 feet MSL."

This amendment shall become effective upon the date of publication in the *FEDERAL REGISTER*.

(Secs. 307(a), 313(a), 72 Stat. 749, 752; 49 U.S.C. 1348, 1354)

Issued in Washington, D.C., on July 12, 1960.

E. R. QUESADA,  
Administrator.

[F.R. Doc. 60-6608; Filed, July 15, 1960; 8:45 a.m.]

[Airspace Docket No. 59-NY-32]

## **PART 608—RESTRICTED AREAS**

### **Modification**

On January 23, 1960, a notice of proposed rule making was published in the *FEDERAL REGISTER* (25 F.R. 612) stating that the Federal Aviation Agency was considering an amendment to § 608.38 of the regulations of the Administrator which would modify the Warren Grove, N.J., Restricted Area (R-26) (Washington Chart).

As stated in the notice, the Warren Grove Restricted Area (R-26) is an area of 30 square miles in the southeastern part of New Jersey, northeast of Atlantic City. It is designated for flight testing special weapons from the surface to 4,000 feet MSL, during all hours each day, and its controlling agency is the Commander, Naval Air Bases, Fourth Naval District, Lakehurst NAS, N.J.

The Department of the Navy has advised that there is no longer a Navy requirement for use of Restricted Area R-26. The Department of the Air Force, however, has requested that the restricted area be modified for use by the New Jersey Air National Guard for conducting rocketry, skip bombing and strafing from the surface to 4,000 MSL, from 0800 to 1800 e.s.t., Friday, Saturday and Sunday, from September 1 to May 31, annually; and 0800 to 1800 e.s.t. each day from June 1 to August 31, annually. The Federal Aviation Agency considers the Air Force proposal justified and is, therefore, modifying the Warren Grove Restricted Area (R-26) by redesignating it to include approximately the same amount of airspace in the same general area, but with slightly realigned boundaries, and by designating the New Jersey Air National Guard, 108th Tactical Fighter Wing (SD), McGuire, AFB, N.J., as the controlling agency.

The Aircraft Owners and Pilots Association concurred in the redesignation

of Restricted Area R-26. The AOPA, however, recommended that, if not already accomplished, a study should be made concerning joint use of this restricted area. The Federal Aviation Agency is presently conducting a study regarding the practicability of joint use of the airspace within Restricted Area R-26.

The Department of the Air Force concurred in the proposal, but suggested that, in order to make the time of designation compatible with the daylight saving time observed in the vicinity of Restricted Area R-26, that "0800 to 1800 e.s.t., daily during June through August, annually," be changed to, "0700 to 1700 e.s.t., daily from June 1 to August 31 annually." The Federal Aviation Agency agrees that this modification to the restricted area's time of designation is desirable and it is reflected in the amendment.

Two other comments were received, from the Air Transport Association of America and the Air Line Pilots Association, each of which concurred in the proposed amendment.

Interested persons have been afforded an opportunity to participate in the making of the rule herein adopted, and due consideration has been given to all relevant matter presented.

In consideration of the foregoing, the following action is taken:

In § 608.38 *New Jersey*, Warren Grove, N.J., Restricted Area (R-26) (Washington Chart) (23 F.R. 8584, 24 F.R. 1832) is amended to read:

*Description by geographical coordinates.* Beginning at latitude 39°46'10" N., longitude 74°20'14" W.; to latitude 39°43'25" N., longitude 74°17'37" W.; to latitude 39°38'36" N., longitude 74°23'27" W.; to latitude 39°39'50" N., longitude 74°25'52" W.; to latitude 39°43'58" N., longitude 74°24'13" W.; to point of beginning.

*Designated altitudes.* Surface to 4,000 feet MSL.

*Time of designation.* From 0700 to 1700 e.s.t., daily, June 1 through August 31. From 0800 to 1800 e.s.t., Fridays, Saturdays, and Sundays, September 1 through May 31.

*Controlling agency.* New Jersey Air National Guard, 108th Tactical Fighter Wing (SD), McGuire AFB, New Jersey.

This amendment shall become effective 0001 e.s.t. August 25, 1960.

(Secs. 307(a), 313(a), 72 Stat. 749, 752; 49 U.S.C. 1348, 1354)

Issued in Washington, D.C., on July 12, 1960.

E. R. QUESADA,  
Administrator.

[F.R. Doc. 60-6609; Filed, July 15, 1960; 8:46 a.m.]

[Airspace Docket No. 59-NY-34]

## **PART 608—RESTRICTED AREAS**

### **Modification**

The purpose of this amendment to § 608.54 of the regulations of the Administrator is to modify the time of designation of the Pendleton, Va., Restricted Area (R-74) (Norfolk Chart).

The presently designated time of use for R-74 is continuous. The activities conducted within this restricted area are ground to air anti-aircraft gunnery, high

altitude weather sounding projectile firing, and firing at pilotless drone aircraft and tow sleeves. The Department of the Navy has stated that these activities can be accomplished from 0800 to 1700 e.s.t., Mondays through Fridays. Therefore, the Federal Aviation Agency is changing the time of use for R-74 from continuous to 0800 through 1700 e.s.t., Mondays through Fridays.

Since this amendment reduces a burden on the public, compliance with the Notice, public procedure, and effective date requirements of section 4 of the Administrative Procedure Act is unnecessary and it may be made effective immediately.

In consideration of the foregoing, the following action is taken:

In § 608.54, the Pendleton, Va., Restricted Area (R-74) (Norfolk Chart) (23 F.R. 8589) is amended by deleting "Continuous." and substituting therefor "From 0800 to 1700 e.s.t., Mondays through Fridays."

This amendment shall become effective upon the date of publication in the FEDERAL REGISTER.

(Secs. 307(a), 313(a), 72 Stat. 749, 752; 49 U.S.C. 1348, 1354)

Issued in Washington, D.C., on July 12, 1960.

E. R. QUESADA,  
Administrator.

[F.R. Doc. 60-6610; Filed, July 15, 1960; 8:46 a.m.]

[Airspace Docket No. 59-NY-43]

## PART 608—RESTRICTED AREAS

### Modification

The purpose of this amendment to § 608.17 of the regulations of the Administrator is to modify the Milford, Del., Restricted Area (R-12) (Washington Chart).

Restricted Area (R-12) is presently designated from the surface to 20,000 feet MSL; time of use, daylight hours only (when the ceiling is at least 5,000 feet and visibility is three miles or better); and the controlling agency, COMNAB, 4th Naval District, Lakehurst NAS, N.J.

Following a recent review of the activities conducted in R-12, the Department of the Navy has agreed that the following modifications of the area are acceptable: reduce the designated altitudes to surface to 3,000 feet MSL; limit the time of use to 0800 to 2200 local time from April 15 through October 31, and 0800 to 2200 local time Saturday and Sunday only from November 1 through April 14; and change the controlling agency to the Federal Aviation Agency. The activities conducted in this area consist of low-level and radar bombing and search light training by naval antisubmarine squadrons.

Since this action reduces a burden on the public, compliance with the notice, public procedure, and effective date requirements of section 4 of the Administrative Procedure Act is unnecessary and it may be made effective immediately.

In consideration of the foregoing, the following action is taken:

In § 608.17, the Milford, Del., Restricted Area (R-12) (Washington Chart) (23 F.R. 8578) is amended by deleting:

*Designated altitudes.* Surface to 20,000 feet MSL.

*Time of designation.* Daylight hours only (when ceiling is at least 5,000' and visibility is three miles or better).

*Controlling agency.* COMNAB, 4th Naval District, Lakehurst NAS, N.J.

and substituting therefor:

*Designated altitudes.* Surface to 3,000 feet MSL.

*Time of designation.* From 0800 to 2200 local time April 15 through October 31. From 0800 to 2200 local time, Saturday and Sunday only, November 1, through April 14.

*Controlling agency.* Federal Aviation Agency, New York ARTC Center.

This amendment shall become effective upon the date of publication in the FEDERAL REGISTER.

(Secs. 307(a), 313(a), 72 Stat. 749, 752; 49 U.S.C. 1348, 1354)

Issued in Washington, D.C., on July 12, 1960.

E. R. QUESADA,  
Administrator.

[F.R. Doc. 60-6611; Filed, July 15, 1960; 8:46 a.m.]

[Airspace Docket No. 60-AN-20]

## PART 608—RESTRICTED AREAS

### Modification

The purpose of this amendment to § 608.61 of the regulations of the Administrator is to change the controlling agency of the Big Delta, Alaska, Restricted Area (R-346) (WAC 77 and 177 Charts).

The Department of the Army has requested that the controlling agency for Restricted Area (R-346) be changed from Arctic Test Branch, Army Field Forces, Fort Greely, Alaska, to U.S. Army Arctic Test Board, Fort Greely, Alaska, in order to correctly designate the command presently responsible for utilization of the airspace within this area.

Since this amendment imposes no additional burden on the public, compliance with the notice, public procedure, and effective date requirement of section 4 of the Administrative Procedure Act is unnecessary and it may be made effective immediately.

In consideration of the foregoing, the following action is taken:

In § 608.61, the Big Delta, Alaska, Restricted Area (R-346) (WAC 77 and 177 Charts) (23 F.R. 8590) is amended by deleting "Arctic Test Branch Army Field Forces, Fort Greely, Alaska" and substituting therefor "U.S. Army Arctic Test Board, Fort Greely, Alaska".

This amendment shall become effective upon the date of publication in the FEDERAL REGISTER.

(Secs. 307(a) and 313(a), 72 Stat. 749, 752; 49 U.S.C. 1348, 1354)

Issued in Washington, D.C., on July 12, 1960.

E. R. QUESADA,  
Administrator.

[F.R. Doc. 60-6612; Filed, July 15, 1960; 8:46 a.m.]

## Title 24—HOUSING AND HOUSING CREDIT

### Chapter II—Federal Housing Administration, Housing and Home Finance Agency

#### SUBCHAPTER C—MUTUAL MORTGAGE INSURANCE AND SERVICEMEN'S MORTGAGE INSURANCE

#### PART 221—MUTUAL MORTGAGE INSURANCE; ELIGIBILITY REQUIREMENTS OF MORTGAGE COVERING ONE- TO FOUR-FAMILY DWELLINGS

#### PART 222—MUTUAL MORTGAGE INSURANCE; RIGHTS AND OBLIGATIONS OF MORTGAGEE UNDER THE INSURANCE CONTRACT

#### Miscellaneous Amendments to Chapter

1. Part 221 is amended by adding a new § 221.4a as follows:

§ 221.4a Approval of individuals and organizations as investing mortgagees.

(a) The Commissioner hereby approves, as investing mortgagees, individuals and organizations which:

(1) Acquire one or more mortgages insured under section 203(b) of the Act; and

(2) Acquire these mortgages from a sponsoring mortgagee or another investing mortgagee; and

(3) Acquire these mortgages subject to the provisions set forth in Part 222 of this subchapter.

(b) Insured mortgages may not be originated by an investing mortgagee.

2. In § 221.5 paragraph (b) is revoked as follows:

§ 221.5 Approval of fiduciary investments.

\* \* \*

(b) [Revoked].

3. In § 222.1 paragraph (f) is amended and new paragraphs (h) and (i) are added as follows:

§ 222.1 Definition of terms.

\* \* \*

(f) The term "mortgagee" means the original lender under a mortgage and its successors and such of its assigns as are approved by the Commissioner. Any reference to the term "mortgagee" as used in Part 221 or this subchapter shall mean one other than an investing mortgagee unless otherwise specified.

\* \* \*

(h) The term "investing mortgagee" means individuals and organizations which acquire one or more mortgages insured under section 203(b) of the Act from a sponsoring mortgagee or another investing mortgagee subject to the provisions set forth in this part.

(i) The term "sponsoring mortgagee" means any approved mortgagee other than a loan correspondent mortgagee or an investing mortgagee, who has sold

and assigned an insured mortgage to an investing mortgagee.

4. Section 222.15 is amended to read as follows:

**§ 222.15 Sale of insured mortgages.**

(a) When the insured mortgage is sold to another approved mortgagee, both seller and buyer shall notify the Commissioner of the sale within 30 days thereof. The buyer shall thereupon succeed to all the rights and become bound by all the obligations of the seller under the contract of insurance and the seller shall be released from its obligations under the contract of insurance.

(b) The provisions of paragraph (a) of this section shall not apply to an assignment, pledge or transfer of an insured mortgage to an investing mortgagee.

5. In § 222.16 paragraph (a) is amended to read as follows:

**§ 222.16 Assignments, pledges or participations.**

(a) *Between approved mortgagees.*

(1) Any approved mortgagee may assign, pledge or transfer an insured mortgage, a group of such mortgages or a partial interest in such mortgage or mortgages to another approved mortgagee by means of any agreement, arrangement or device (including declaration of trust, participation certificates or trust certificates) if the transaction does not constitute a final sale. Any such transfer shall provide that one of the approved mortgagees shall be the mortgagee of record under the contract of insurance and the Commissioner shall have no obligation to recognize or deal with any party except the approved mortgagee of record with respect to the rights, benefits and obligations of the mortgagee under the contract of insurance. With respect to transfers meeting the requirements of this paragraph, mortgagees are not required to notify the Commissioner of the transfer or to obtain the Commissioner's approval.

(2) The provisions of subparagraph (1) of this paragraph shall not apply to an assignment, pledge or transfer of an insured mortgage to an investing mortgagee. However, upon the assignment of a mortgage to an investing mortgagee the credit instrument shall show on its face or on the reverse side thereof the date of assignment, the name of the assignee and the fact that any assignment or reassignment thereof is subject to compliance with the Regulations of the Federal Housing Administration.

6. Part 222 is amended by adding a new § 222.16a as follows:

**§ 222.16a Form of assignment to investing mortgagee.**

(a) The assignment of the insured mortgage and credit instrument to an investing mortgagee shall contain the following paragraph:

It is a condition of this assignment that the assignee and his heirs, successors, executors, administrators and assigns shall be limited to the receipt of: (1) The principal recovery; (2) all net income from the insured mortgage; (3) the net proceeds from a

sale of the mortgage; and (4) the transfer of any debentures, cash adjustment check, or certificates of claim issued by the Federal Housing Commissioner in the name of the assignor or the net proceeds of the foregoing. Unless made subject to the terms and conditions of this paragraph, no further assignment or transfer of this mortgage shall be valid unless and until: (1) The insurance contract with the Federal Housing Administration has been duly terminated in accordance with FHA Regulations; or (2) the mortgage is assigned to an FHA approved mortgagee other than a loan correspondent mortgagee or investing mortgagee. It is a further condition of this assignment that the assignor and assignee or his heirs or successors shall, at no time, take any action inconsistent with the FHA Regulations and the assignee will take no action which will prevent the assignor from complying with the FHA Regulations. All the rights and obligations under the contract or contracts of insurance with the Federal Housing Administration are retained by the assignor and FHA will have no obligation to recognize or deal with any other party except the assignor. The assignor shall have a tacit lien on the mortgage and any principal recovery and net income therefrom as security for the payment of any amounts the assignor may be required to pay for the benefit of the assignee. This paragraph is for the benefit of the Federal Housing Administration and may not be altered. This paragraph will be controlling in the event of any conflict with its provisions by any other agreement or covenant between the assignor and assignee, but shall no longer have any force or effect if the mortgage is assigned to an FHA approved mortgagee other than a loan correspondent mortgagee or an investing mortgagee.

(b) Any agreement to sell an insured mortgage entered into by a sponsoring mortgagee with a prospective investing mortgagee shall contain the following paragraph:

It is mutually agreed by the parties that the assignment of the FHA insured mortgage and credit instrument described herein will contain the language as specified for inclusion in the assignment as set forth in the FHA Regulations. It is further agreed that the credit instrument to be assigned shall show on its face or on the reverse side thereof the date of assignment, the name of the assignee and the fact that any assignment or reassignment thereof is subject to compliance with the Regulations of the Federal Housing Administration.

(Sec. 211, 52 Stat. 23; 12 U.S.C. 1715b. Interpret or apply sec. 203, 52 Stat. 10, as amended; 12 U.S.C. 1709)

Issued at Washington, D.C., July 13, 1960.

JULIAN H. ZIMMERMAN,  
Federal Housing Commissioner.

[F.R. Doc. 60-6704; Filed, July 15, 1960; 8:52 a.m.]

## Title 33—NAVIGATION AND NAVIGABLE WATERS

### Chapter II—Corps of Engineers, Department of the Army

#### PART 203—BRIDGE REGULATIONS

##### Matanzas River, Fla.

Pursuant to the provisions of section 5 of the River and Harbor Act of August

18, 1894 (28 Stat. 362; 33 U.S.C. 499), § 203.432 is hereby prescribed to govern the operation of the drawspan of the Bridge of Lions across Matanzas River (Intracoastal Waterway) in St. Augustine, Florida, as follows:

**§ 203.432 Matanzas River (Intracoastal Waterway), Fla.; Bridge of Lions (State Road No. A1A) in St. Augustine.**

(a) Except as otherwise provided in paragraph (b) of this section, the owners or agency controlling the bridge shall not be required to open the drawspan for the passage of vessels between 7:30 a.m. and 8:15 a.m. and between 5:00 p.m. and 5:45 p.m., Monday through Friday of each week.

(b) The drawspan shall be opened promptly at any time to allow the passage of tugboats with tows, vessels owned or operated by the United States, and vessels in distress. Such vessels desiring to pass shall so indicate by four blasts of a whistle or similar device.

(c) The owners of or agency controlling the bridge shall keep a copy of the regulations in this section conspicuously posted on both the upstream and downstream sides thereof, in such manner that it can be easily read at any time.

[Regs., June 30, 1960, 285/91 (Matanzas River, Fla.)—ENG CW-O] (Sec. 5, 28 Stat. 362; 33 U.S.C. 499)

R. V. LEE,  
Major General, U.S. Army,  
The Adjutant General.

[F.R. Doc. 60-6586; Filed, July 15, 1960; 8:45 a.m.]

## Title 26—INTERNAL REVENUE, 1954

### Chapter I—Internal Revenue Service, Department of the Treasury

#### SUBCHAPTER E—ALCOHOL, TOBACCO, AND OTHER EXCISE TAXES

[T.D. 6482]

#### PART 172—DISPOSITION OF SEIZED PERSONAL PROPERTY

##### Miscellaneous Amendments

On May 11, 1960, a notice of proposed rule making to amend 26 CFR Part 172, with respect to the disposition of seized personal property, was published in the FEDERAL REGISTER (25 F.R. 4182).

In accordance with the notice, interested persons were afforded an opportunity to submit written data, views, or arguments pertaining thereto. No comments or objections having been received, the amendments as published in the FEDERAL REGISTER are hereby adopted, subject to the clarifying changes set forth below:

1. The semi-colon after the word "taxes" in paragraph 4 of the notice, amending § 172.38(g), is removed and a comma substituted therefor.

2. A new paragraph 4(a) is inserted immediately following paragraph 4, to amend § 172.39.

This Treasury decision shall become effective 30 days after the date of its publication in the **FEDERAL REGISTER**.

(68A Stat. 917, 62 Stat. 761, as amended; 52 Stat. 1252, 53 Stat. 1292; 26 U.S.C. 7805, 18 U.S.C. 1261, 15 U.S.C. 907, 49 U.S.C. 788)

[SEAL] **CHARLES I. FOX,**  
*Acting Commissioner of*  
*Internal Revenue.*

Approved: July 12, 1960.

**FRED C. SCRIBNER, JR.,**  
*Acting Secretary of the Treasury.*

In order to implement and set forth the policy of the Treasury Department in regard to the action taken on petitions for remission or mitigation of forfeitures, 26 CFR (1954) Part 172 is amended as follows:

#### § 172.9. [Amendment]

**PARAGRAPH 1.** Section 172.9 is amended by adding the following new sentence to the end thereof: "Addiction to narcotic drugs and use of marihuana will be treated as if such were commercial crime."

**PAR. 2.** Section 172.16 is amended by changing the section to read as follows:

#### § 172.16 Equity.

The term "equity", as used in administrative action on petitions for remission or mitigation of forfeitures, shall mean that interest which a petitioner has in the personal property or carrier petitioned for at the time of final administrative action on the petition, but such interest shall not be considered to include any unearned finance charges from the date of seizure or the date of default, if later; any amount rebatable on account of paid insurance premiums; attorney's fees for collection; any amount identified as dealer's reserve; or any amount in the nature of liquidated damages that may have been agreed upon by the buyer and the petitioner.

**PAR. 3.** Section 172.26 is amended by changing the section to read as follows:

#### § 172.26 Forfeiture of seized personal property.

(a) **Administrative forfeiture.** (1) Personal property seized as subject to forfeiture under the internal revenue laws which has an appraised value of \$2,500.00 or less, and any carrier appraised by the seizing officer at \$2,500.00 or less under the custom laws shall be forfeited to the United States in administrative or summary forfeiture proceedings.

(2) In respect of personal property seized as subject to forfeiture under the internal revenue laws which, in the opinion of the seizing officer, has an appraised value of \$2,500.00 or less, such officer shall cause a list containing a particular description of the seized property to be prepared in duplicate, and an appraisal thereof to be made by three sworn appraisers, selected by the seizing officer, who shall be respectable and disinterested citizens of the United States residing within the internal revenue district wherein the seizure was made. Such list and appraisal shall be properly attested to by the seizing officer and such appraisers.

(3) In respect of personal property seized as subject to forfeiture under the internal revenue laws and found by the appraisers to have a value of \$2,500.00 or less, the Supervisor in Charge shall publish a notice once a week for three consecutive weeks, in some newspaper of the judicial district where the seizure was made, describing the articles and stating the time, place, and cause of their seizure, and requiring any person claiming them to appear and make such claim within 30 days from the date of the first publication of such notice.

(4) In respect of carriers seized as subject to forfeiture under the provisions of the custom laws and appraised by the seizing officer as having a value of \$2,500.00 or less, the Supervisor in Charge shall publish notice of seizure in the same manner as required by subparagraph (3) of this paragraph; provided that the time for making claim shall be within 20 days from the date of first publication.

(5) Any person claiming the personal property or carrier so seized, within the time specified in the notice, may file with the Supervisor in Charge a claim, stating his interest in the articles seized, and may execute a bond to the United States in the penal sum of \$250.00, conditioned that, in case of condemnation of the articles so seized, the obligors shall pay all the costs and expenses of the proceedings to obtain such condemnation. Both the claim and the cost bond should be executed in quadruplicate.

(b) **Judicial condemnation.** (1) The Assistant Regional Commissioner or the Supervisor in Charge shall authorize the United States Attorney to institute libel proceedings in those instances where the appraised value of the seized personal property or carrier exceeds \$2,500.00, or where a claim and cost bond are filed as provided above.

**PAR. 4.** Section 172.38 is amended by changing the section to read as follows:

#### § 172.38 Contents of the petition.

(a) **Description of property.** The petition should contain such a description of the property and such facts of the seizure as will enable the officers of the Internal Revenue Service concerned to identify the property.

(b) **Statement regarding knowledge of seizure.** In the event the petition is filed for the restoration of the proceeds derived from sale of the property pursuant to summary forfeiture, it should also contain, or be supported by, satisfactory proof that the petitioner did not know of the seizure prior to the declaration or condemnation of forfeiture, and that he was in such circumstances as prevented him from knowing of the same. (See also § 172.39.)

(c) **Interest of petitioner.** The petition should state in clear and concise terms the nature and amount of the present interest of the petitioner in the property, and the facts relied upon to show that the forfeiture was incurred without willful negligence or without any intention upon the part of the petitioner to defraud the revenue or to violate the

law, or such other mitigating circumstances as, in the opinion of the petitioner, would justify the remission or mitigation of the forfeiture.

(d) **Petitioner innocent party.** If the petitioner is not the one who in person committed the act which caused the seizure, the petition should state how the property came into the possession of such other person, and that the petitioner had no knowledge or reason to believe, if such be the fact, that the property would be used in violation of law.

(e) **Results of investigation.** The petition should also state what investigation, if any, was made of such other person, through principal Federal, State, or local law enforcement officers, to determine whether such other person had either a record or a reputation, or both, as a liquor law violator in a case involving a seizure for violation of the internal revenue laws relating to liquor; or as a violator in the field of commercial crime in all other types of seizures. The petition should further state the information obtained from said investigation, and whether such information was received before the petitioner acquired his interest in the property, or such other person acquired his right in the property, whichever occurred later.

(f) **Documents supporting claim.** The petition should also be accompanied by copies, certified by the petitioner under oath as correct, of contracts, bills of sale, chattel mortgages, reports of investigators or credit reporting agencies, affidavits, and any other papers or documents that would tend to support the claims made in the petition.

(g) **Costs.** The petition should also contain an undertaking to pay the costs, if costs are assessed as a condition of allowance of the petition. Costs shall include all the expenses incurred in seizing and storing the property; the costs borne or to be borne by the United States; the taxes, if any, payable by the petitioner or imposed in respect of the property to which the petition relates; the penalty, if any, asserted by the Director, Alcohol and Tobacco Tax Division; and, if the property has been sold, or is in the course of being sold, the expenses so incurred.

#### § 172.39 [Amendment]

**PAR. 4(a).** Section 172.39 is amended by changing "§ 172.38(c)" in the first sentence to read "§ 172.38(b)."

**PAR. 5.** Section 172.41 is amended by changing the section to read as follows:

#### § 172.41 Discontinuance of administrative proceedings.

If the petition is filed prior to administrative sale or retention for official use, proceedings to effect such sale or retention will be discontinued.

**PAR. 6.** Section 172.43 is amended by changing the section to read as follows:

#### § 172.43 Final action.

(a) **Petitions for remission or mitigation of forfeiture.** (1) The Director, Alcohol and Tobacco Tax Division, shall take final action on any petition filed pursuant to these regulations. Such

final action shall consist either of the allowance or denial of the petition. In the case of allowance, the Director shall state the conditions of the allowance.

(2) In the case of an allowed petition, the Director, Alcohol and Tobacco Tax Division, may order the property returned to the petitioner, sold for the account of the petitioner, or, pursuant to agreement, acquired for official use.

(3) The Assistant Regional Commissioner shall notify the petitioner of the allowance or denial of the petition and, in the case of allowance, the conditions under which the Director, Alcohol and Tobacco Tax Division, allowed the petition.

(b) *Offers in compromise of liability to forfeiture.* (1) The Director, Alcohol and Tobacco Tax Division, shall take final action on any offer in compromise of the liability to forfeiture of personal property seized as provided in § 172.25. Such action shall consist either of the acceptance or rejection of the offer. (2) The Assistant Regional Commissioner shall notify the proponent of the acceptance or rejection of the offer.

PAR. 7. Section 172.44 is amended to read as follows:

**§ 172.44 Acquisition for official use and sale for account of petitioner in allowed petitions.**

(a) *Acquisition for official use.* (1) The property may be purchased by the United States pursuant to agreement and retained for official use. Where the petitioner is the owner, the purchase price is the appraised value of the property less all costs. Where the petitioner is a creditor, the purchase price is whichever one of these amounts is the smaller: (i) the petitioner's equity, or (ii) the appraised value of the property less the amount of all costs.

(b) *Sale for account of petitioner.* (1) The petitioner may elect not to comply with the condition on which the property may be returned. In this event, the Supervisor in Charge is authorized to sell it. Where the petitioner is the owner of the property, there is deducted from the proceeds of the sale all costs, and the Regional Commissioner pays to the petitioner, out of the proper appropriation, an amount equal to the balance, if any. Where the petitioner is a creditor, there is deducted from the proceeds of the sale all costs, and the Regional Commissioner pays to the petitioner, out of the proper appropriation, an amount equal to the balance, if any: *Provided*, That if that amount exceeds the amount of the equity, only the latter amount is paid to the petitioner.

**§ 172.55 [Amendment]**

PAR. 8. Section 172.55 is amended by substituting, in the first sentence, the phrase "in the judicial district" for the phrase "in the internal revenue collection district."

[F.R. Doc. 60-6653; Filed, July 15, 1960; 8:51 a.m.]

## Title 39—POSTAL SERVICE

### Chapter I—Post Office Department

#### PART 35—PHILATELY

#### PART 49—STAR ROUTE COLLECTION AND DELIVERY SERVICE

##### Miscellaneous Amendments

The regulations of the Post Office Department are amended as follows:

I. In § 35.5 *Inaugural covers*, subparagraph (1) of paragraph (a) is amended to show that official first flight cachets are authorized if the carrier notifies the Department at least 20 days before the scheduled date of the new service. As so amended subparagraph (1) reads as follows:

**§ 35.5 Inaugural covers.**

(a) *First flights*—(1) *Cachets authorized.* The Post Office Department recognizes events such as new air service by applying cachets on inaugural covers. Cachets are authorized for all stop points on a new air mail route, for new stop points on existing routes or additional segments, and for events of national aviation interest. Official cachets of distinctive commemorative design are authorized by publication of notice in the Postal Bulletin after notification by the carrier of at least 20 days prior to the scheduled date of the new service.

NOTE: The corresponding Postal Manual section is 145.511.

(R.S. 161, as amended, 396, as amended; 5 U.S.C. 22, 369)

II. In § 49.3 *Box delivery and collection service*, as amended by Federal Register Document 60-1081, 25 F.R. 905-908, subparagraph (4) of paragraph (b) is amended to implement instructions regarding star route delivery-residence requirements. As so amended, subparagraph (4) reads as follows:

**§ 49.3 Box delivery and collection service.**

\* \* \* \* \*

(b) *Availability.* \* \* \* (4) Request from the post office to which mail is addressed, delivery and collection service. Star route patrons residing between two post offices may receive mail service from that post office which is the one next preceding the patron's residence, or from either post office if there is a return trip. In addition, the patron may receive delivery from the post office from which the star route originates.

NOTE: The corresponding Postal Manual section is 159.32d.

(R.S. 161, as amended, 396, as amended, 396d, as amended, 3965, 3966, 3968; 5 U.S.C. 22, 369, 39 U.S.C. 481, 483, 484, 486)

[SEAL] HERBERT B. WARBURTON,  
General Counsel.

[F.R. Doc. 60-6651; Filed, July 15, 1960; 8:51 a.m.]

#### PART 112—RATES AND CONDITIONS FOR SPECIFIC CLASSES

#### PART 168—DIRECTORY OF INTERNATIONAL MAIL

##### International Mail Regulations

The regulations of the Post Office Department are amended as follows:

I. In Part 112—Rates and Conditions For Specific Classes, as published in Federal Register Document 60-1246, 25 F.R. 1095-1126, make the following changes:

A. In § 112.7 *Small packets*, paragraph (h) is amended by deleting the countries listed below. Small packets are now being accepted to these countries.

Cambodia.  
Cape Verde Islands.  
Estonia.  
Finland.  
Iraq.  
Latvia.  
Lithuania.  
Macao.  
Panama.  
Portuguese East Africa.  
Portuguese India.  
Portuguese Timor.  
Portuguese West Africa.  
Union of Soviet Socialist Republics.

NOTE: The corresponding Postal Manual section is 222.78.

B. In § 112.8 *Eight-ounce merchandise packages*, paragraph (e) is amended by deleting "Panama" from the list of countries which accept eight-ounce merchandise packages.

NOTE: The corresponding Postal Manual section is 222.85.

(R.S. 161, as amended, 396, as amended, 398, as amended; 5 U.S.C. 22, 369, 372)

II. In § 168.5 *Individual country regulations* make the following changes:

A. In the countries "Estonia, Latvia, and Lithuania", under Postal Union Mail, the item *Small packets* is amended by striking out "Not accepted." and inserting in lieu thereof "Accepted. See U.S.S.R."

B. In each of the countries listed below, under Postal Union Mail, the item *Small packets* is amended by striking out "Not accepted.", and inserting in lieu thereof "Accepted."

Cambodia.  
Cape Verde Islands.  
Iraq.  
Macao.  
Portuguese East Africa (Mozambique).  
Portuguese India (Goa, Damao, and Diu).  
Portuguese Timor.  
Portuguese West Africa (Angola, Guinea, St. Thomas Island, and Prince Island).

C. In the country "Panama (Republic of)", under Postal Union Mail, the item *Small packets* is amended by striking out "Not accepted" and inserting in lieu thereof "Accepted."; and the item *Eight-ounce merchandise packages* is deleted.

D. In the country "Union of Soviet Socialist Republics", as amended by Federal Register Document 60-5926, 25 F.R. 5937-5938, under Postal Union Mail, the item *Small packets*, is amended to read as follows:

**Small packets**—Accepted. Each small packet must have enclosed a Form 2976—A listing the contents in detail, in addition to bearing Form 2976 on the upper portion thereof. (See § 111.4 of this chapter.)

(R.S. 161, as amended, 396, as amended, 398, as amended; 5 U.S.C. 22, 369, 372)

[SEAL] HERBERT B. WARBURTON,  
General Counsel.

[F.R. Doc. 60-6615; Filed, July 15, 1960;  
8:46 a.m.]

## PART 201—PROCEDURES OF THE POST OFFICE DEPARTMENT

### Rules of Procedure Relating to Fines, Deductions, and Damages

The following rules amend Subpart D of Part 201, Procedures of the Post Office Department, and are made effective as to all proceedings which are filed after 30 days from the date of publication of this document in the **FEDERAL REGISTER**.

The Department will continue to study the problems involved in the rules with respect to fines, deductions, and damages with a view to making such further changes which may from time to time appear to be desirable. Members of the bar, publishers, and others are invited to submit any further comments and suggestions they may have to the General Counsel, Post Office Department.

Subpart D of Part 201 is amended to read as follows:

### Subpart D—Rules of Procedure Relating to Fines, Deductions, and Damages

Sec.  
201.60 Fines, deductions, and damages.  
201.61 Appeal.

**AUTHORITY:** §§ 201.60 and 201.61 issued under R.S. 161, as amended, 396, as amended, 3962, as amended, 4010, as amended, sec. 5, 39 Stat. 425, 428, 431, sec. 1, 40 Stat. 748, sec. 901, 72 Stat. 783; 5 U.S.C. 22, 369, 39 U.S.C. 443, 539, 563, 568, 570, 655, and 49 U.S.C. 1471.

#### § 201.60 Fines, deductions, and damages.

(a) **Fines.** Where evidence is found or reported against:

(1) Rail and noncontractual steamship and air carriers for unjustified failure to discharge their responsibilities in violation of the applicable provisions of Title 39, or Title 49, U.S. Code, or of the Rules, Regulations and Orders of the Postmaster General issued under those statutory provisions, or for other irregularities or delinquencies;

(2) Mail contractors for failure to observe the contract terms or failure to perform full service, or for other irregularities or delinquencies;

such carriers and contractors, after investigation, are given notice of the irregularity or delinquency, in writing, by an official representative of the Postal Service. They are given reasonable opportunity to answer the charges and explain the alleged irregularity or delinquency. The facts are briefed, and a full report and recommendations are forwarded together with the answer: (i) In

the case of steamship carriers performing non-contract services directly to the Bureau of Transportation; (ii) in all other cases, to the Distribution and Traffic Manager who examines and reviews the charges in order to determine the responsibility of the carrier or contractor involved and, if the facts warrant, imposes fine or deduction computed in accordance with statutory, regulatory, or contractual provisions. The Distribution and Traffic Manager may charge directly, in the first instance, the contractor or carrier, in which case the answer shall be filed with the Distribution and Traffic Manager.

**NOTE:** Postal Field Officials use Form 5178, *Notification of Irregularity in Service-Delay-Damage to Parcel Post Mail*. (For Surface Carriers), and Form 2759, *Report of Irregular Handling of Air Mail*. (For Air Carriers.)

(b) **Deductions.** The same procedure as in paragraph (a) of this section is followed in making deductions for failure to perform service as required except that the Distribution and Traffic Manager is authorized, upon an evaluation of the evidence, to waive omissions of service or make deductions therefor in payments made to mail contractors.

**NOTE:** Postal Field Officials use Form 5440C-D-E, *Contract Route Service Order*, to notify star route contractors of deductions ordered, and the remission of previous deductions is ordered on the basis or in view of the facts.

(c) **Damages.** Damage cases are investigated in the same manner as fine cases. Where it is found, after investigation, that the Government has suffered a loss through the payment of indemnity or otherwise as a result of damage to or loss of mails, such loss may be taken into consideration in determining the amount of the fine. The Distribution and Traffic Manager determines if a fine should be imposed for damage to or loss of mail.

#### § 201.61 Appeal.

(a) Rail and noncontractual air carriers may take an appeal from a decision of the Distribution and Traffic Manager to the Bureau of Transportation within 6 months from the date of imposition of the fine or deduction. The Bureau's decision is final with respect to all cases under its jurisdiction.

(b) Mail contractors including air and steamship carriers performing contract services and only when discharging contractual obligations may take an appeal from the findings of fact or decision of the Distribution and Traffic Manager to the Board of Contract Appeals. The rules of procedure for appeal of the contractor are covered by Subpart L, *Rules of Procedure for the Board of Contract Appeals*, of this part.

[SEAL] HERBERT B. WARBURTON,  
General Counsel.

The foregoing are hereby adopted as Rules of Procedure for the Post Office Department.

RAYMOND J. KELLY,  
Judicial Officer.

[F.R. Doc. 60-6650; Filed, July 15, 1960;  
8:51 a.m.]

## Title 43—PUBLIC LANDS: INTERIOR

### Chapter I—Bureau of Land Management, Department of the Interior

#### APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 2156]

[82669]

#### WYOMING

##### Certain Power Site Orders

In the matter of Power Site Restoration No. 555; Power Site Cancellation No. 138; partly revoking the Executive Order of July 2, 1910, and the Departmental orders of November 3, 1921 and March 7, 1932; (Power Site Reserve No. 5; Power Site Classification No. 8, Wyoming No. 1; Willow and Freemont Lakes Reservoir Sites).

By virtue of the authority vested in the President by section 1 of the act of June 25, 1910 (36 Stat. 847; 43 U.S.C. 141), and pursuant to Executive Order No. 10355 of May 26, 1952, and by virtue of the authority contained in section 3 of the act of June 17, 1902 (32 Stat. 388; 43 U.S.C. 416) and pursuant to the determination of the Federal Power Commission in DA-146-Wyoming, dated May 29, 1959, and as Secretary of the Interior, it is ordered as follows:

1. The Executive Order of July 2, 1910, creating Power Site Reserve No. 5, the Departmental order of November 3, 1921, creating Power Site Classification No. 8, Wyoming No. 1, and the Departmental order of March 7, 1932, withdrawing lands for the Willow and Freemont Lakes Reservoir Sites, are hereby revoked so far as they affect the following-described lands:

#### SIXTH PRINCIPAL MERIDIAN

T. 35 N., R. 109 W.  
Sec. 19, lots 2, 3, 6, NE $\frac{1}{4}$ SW $\frac{1}{4}$  and N $\frac{1}{2}$ SE $\frac{1}{4}$ .  
T. 35 N., R. 110 W.  
Sec. 24, SE $\frac{1}{4}$ NE $\frac{1}{4}$  and W $\frac{1}{2}$ SE $\frac{1}{4}$ ;  
Sec. 25, NE $\frac{1}{4}$ NE $\frac{1}{4}$ .

The areas described aggregate 399.38 acres.

2. The lands are situated approximately 15 miles north of Pinedale, Wyoming, in Sublette County. Topography is rough and mountainous. Soils are sandy loam, shallow, and developed over glacial till.

3. Subject to any valid existing rights and the requirements of applicable law, the lands, except those in section 24, are hereby opened to filing of applications, selections, and locations in accordance with the following:

a. Applications and selections under the nonmineral public land laws may be presented to the Manager mentioned below, beginning on the date of this order. Such applications and selections will be considered as filed on the hour and respective dates shown for the various classes enumerated in the following paragraphs:

(1) Applications by persons having prior existing valid settlement rights, preference rights conferred by existing laws, or equitable claims subject to al-

lowance and confirmation will be adjudicated on the facts presented in support of each claim or right. All applications presented by persons other than those referred to in this paragraph will be subject to the applications and claims mentioned in this paragraph.

(2) Until 10:00 a.m. on January 8, 1961, the State of Wyoming shall have a preferred right of application to select the lands in accordance with and subject to the provisions of subsection (c) of section 2 of the act of August 27, 1958 (72 Stat. 928; 43 U.S.C. 851, 852), and the regulations in 43 CFR. During that period the State may apply under any statute or regulation applicable thereto for the reservation to it or to any of its political subdivisions of any of the lands required as a right-of-way for a public highway or as a source of material for the construction and maintenance of such highways, as provided by Section 24 of the Federal Power Act, as amended.

(3) All valid applications and selections under the nonmineral public land laws, other than any from the State, presented prior to 10:00 a.m. on January 8, 1961, will be considered as simultaneously filed at that hour. Rights under such applications and selections filed after that hour will be governed by the time of filing.

b. The lands have been open to applications and offers under the mineral-leasing laws. Those in sections 24 and 25 have been open to mining location. Those in section 19 will be open to mining location at 10:00 a.m. on January 8, 1961.

c. The lands in section 24 have previously been restored to entry subject to the provisions of section 24 of the Federal Power Act, pursuant to the determination of the Federal Power Commission in DA-16-Wyoming, issued June 29, 1922. The effect of this order, therefore, is to relieve such lands of the limitations prescribed by the said section 24.

4. Persons claiming preference rights based upon valid settlement, statutory preference, or equitable claims must enclose properly corroborated statements in support of their applications, setting forth all facts relevant to their claims. Detailed rules and regulations governing applications which may be filed pursuant to this notice can be found in Title 43 of the Code of Federal Regulations.

Inquiries concerning the lands should be addressed to the Manager, Land Office, Bureau of Land Management, Cheyenne, Wyoming.

ROGER ERNST,  
*Assistant Secretary of the Interior.*

JULY 8, 1960.

[F.R. Doc. 60-6613; Filed, July 15, 1960;  
8:46 a.m.]

[Public Land Order 2157]

[Colorado 021327]

## COLORADO

### Partially Revoking Air Navigation Site Withdrawal 122

By virtue of the authority contained in section 4 of the act of May 24, 1928

(45 Stat. 729; 49 U.S.C. 214), it is ordered as follows:

1. The departmental order of July 12, 1938, which reserved lands for use of the Department of Commerce in the maintenance of air navigation facilities, is hereby revoked so far as it affects the following-described lands:

#### SIXTH PRINCIPAL MERIDIAN

T. 29 S., R. 63 W.,

A tract of land in the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 11, from which the SE corner of Section 11, T. 29 S., R. 63 W., 6th P.M., Colorado, bears S 1320 feet: from Corner No. 1 by metes and bounds, thence

West 1320 feet to corner No. 2;  
North 1320 feet to corner No. 3;  
East 1320 feet to corner No. 4;  
South 575.03 feet to corner No. 5;  
West 20 feet to corner No. 6;  
South 55 feet to corner No. 7;  
West 30.5 feet to corner No. 8;  
South 13°15' W. 30.8" to corner No. 9;  
East 57.5 feet to corner No. 10;  
South 660 feet to corner No. 1, the place of beginning.

The tract described contains 39.94 acres.

2. The land is located approximately 13 miles east and nine miles north of Aguilar, Colorado. Soils are generally shallow and sandy loam in texture with topography slightly rolling. The vegetation is of native short grass, the dominant species being blue grama and other associated short grasses.

3. Subject to any valid existing rights and the requirements of applicable law, the lands are hereby opened to filing of applications, selections, and locations in accordance with the following:

a. Applications and selections under the nonmineral public land laws and applications and offers under the mineral leasing laws may be presented to the Manager mentioned below, beginning on the date of this order. Such applications, selections, and offers will be considered as filed on the hour and respective dates shown for the various classes enumerated in the following paragraphs:

(1) Applications by persons having prior existing valid settlement rights, preference rights conferred by existing laws, or equitable claims subject to allowance and confirmation will be adjudicated on the facts presented in support of each claim or right. All applications presented by persons other than those referred to in this paragraph will be subject to the applications and claims mentioned in this paragraph.

(2) All valid applications and selections under the nonmineral public land laws and applications and offers under the mineral leasing laws presented prior to 10:00 a.m. on August 16, 1960, will be considered as simultaneously filed at that hour. Rights under such applications, selections and offers filed after that hour will be governed by the time of filing.

b. The lands will be open to applications and offers under the mineral leasing laws and to location under the United States mining laws beginning at 10:00 a.m. on August 16, 1960.

4. The State of Colorado has waived the preference right of application granted to it by subsection (c) of sec-

tion 2 of the act of August 27, 1958 (72 Stat. 928; 43 U.S.C. 851-852).

5. Persons claiming preference rights based upon valid settlement, statutory preference, or equitable claims must enclose properly corroborated statements in support of their applications, setting forth all facts relevant to their claims. Detailed rules and regulations governing applications which may be filed pursuant to this notice can be found in Title 43 of the Code of Federal Regulations.

Inquiries concerning the lands shall be addressed to the Manager, Land Office, Bureau of Land Management, Denver, Colorado.

ROGER ERNST,  
*Assistant Secretary of the Interior.*

JULY 11, 1960.

[F.R. Doc. 60-6614; Filed, July 15, 1960;  
8:46 a.m.]

## Title 49—TRANSPORTATION

### Chapter I—Interstate Commerce Commission

[S. O. 934]

#### PART 95—CAR SERVICE

### Chicago and North Western Railway Co. Authorized To Operate Over Certain Trackage of the Chicago, Burlington & Quincy Railroad Co.

At a session of the Interstate Commerce Commission, Division 3, held at its office in Washington, D.C., on the 12th day of July A.D. 1960.

It appearing, That recent floods have severely damaged tracks on the Chicago and North Western Railway Company branch line between Platte River Junction and Morse Bluff, Nebraska; and that the Chicago and North Western Railway Company is unable to transport traffic over its line between Morse Bluff and Superior, Nebraska, so as to properly serve the public and that the handling, routing and movement of this carrier's traffic (including trains) over the Chicago, Burlington & Quincy Railroad Company's lines between Lincoln and Seward via Milford, Nebraska, will best promote the service in the interest of the public and the commerce of the people; and that notice and public procedure are impracticable and contrary to the public interest and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered, That:

#### § 95.934 Service Order 934.

(a) *The Chicago and North Western Railway Company authorized to operate over certain trackage of the Chicago, Burlington & Quincy Railroad Company.* The Chicago and North Western Railway Company is authorized to handle and move traffic (including trains) originating or terminating on its line at or between Morse Bluff and Superior, Nebraska, over the tracks of the Chicago, Burlington & Quincy Railroad Company between Lincoln and Seward via Milford, Nebraska.

(b) *Compensation.* The settlement for the handling of traffic ordered and described in paragraph (a) of this section shall be upon such terms as between the carriers as they may agree upon or in the event of their disagreement as the Commission may, after subsequent hearing find to be just and reasonable.

(c) *Application.* The provisions of this order shall apply to intrastate and foreign traffic as well as interstate traffic.

(d) *Rates to be applied.* Inasmuch as such disregard of routing is deemed to be due to carrier's disability, the rates applicable to traffic so forwarded by routes other than those designated by

shippers, or by carriers shall be the rates which were applicable at the date of shipment over the routes so designated.

(e) *Effective date.* This order shall become effective at 12:01 a.m., July 13, 1960.

(f) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., December 31, 1960, unless otherwise modified, changed, suspended, or annulled by order of this Commission.

(Sec. 1, 12, 15, 24 Stat. 379, 383, 384, as amended; 49 U.S.C. 1, 12, 15. Interprets or applies sec. 1(10-17), 15(4), 40 Stat. 101, as amended, 54 Stat. 911; 49 U.S.C. 1(10-17), 15(4))

*It is further ordered,* That copies of this order and direction shall be served

upon the Nebraska State Railway Commission, and upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and per diem agreement under the terms of that agreement; and that notice of this order shall be given to the general public by depositing a copy in the office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Division 3.

[SEAL] HAROLD D. MCCOY,  
Secretary.

[F.R. Doc. 60-6649; Filed, July 15, 1960;  
8:50 a.m.]

# Proposed Rule Making

## DEPARTMENT OF THE TREASURY

Internal Revenue Service

[ 26 CFR (1954) Part 45 ]

### MISCELLANEOUS STAMP TAXES

#### Notice of Proposed Rule Making

Notice is hereby given, pursuant to the Administrative Procedure Act, approved June 11, 1946, that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury of his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing, in duplicate, to the Commissioner of Internal Revenue, Attention: T:P, Washington 25, D.C., within the period of 30 days from the date of publication of this notice in the FEDERAL REGISTER. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner within the 30-day period. In such a case, a public hearing will be held and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954, as amended (68A Stat. 917; 26 U.S.C. 7805).

[SEAL] DANA LATHAM,  
Commissioner of Internal Revenue.

The following regulations are hereby prescribed under Subchapters A, B, and C of Chapter 36, Subchapter F of Chapter 38, Subchapters B, C, D, and F of Chapter 39, Chapter 40, and certain related administrative provisions of Subtitle F of the Internal Revenue Code of 1954 as in effect July 1, 1960.

#### Subpart A—Introduction

- Sec.  
45.0-1 Introduction.  
45.0-2 General definitions and use of terms.  
45.0-3 Scope of regulations.  
45.0-4 Extent to which the regulations in this part supersede prior regulations.

#### Subpart B—Playing Cards

- 45.4451 Statutory provisions; imposition of tax.  
45.4451-1 Imposition, rate and application of tax.  
45.4452 Statutory provisions; definition of manufacturer.  
45.4452-1 Who is a manufacturer.  
45.4453 Statutory provisions; exemption in case of exportation.  
45.4453-1 Exemption in case of exportation.  
45.4453-2 Removal to foreign-trade zones.  
45.4454 Statutory provisions; liability for tax.  
45.4454-1 Liability for tax.

- Sec.  
45.4455 Statutory provisions; registration.  
45.4455-1 Manufacturers to register.  
45.4456 Statutory provisions; stamps.  
45.4456-1 Stamps for payment of tax.  
45.4456-2 Purchase of stamps.  
45.4456-3 Affixing stamps.  
45.4456-4 Abandoned or forfeited playing cards.  
45.4456-5 Cancellation of stamps.  
45.4456-6 Redemption of stamps.  
45.4457 Statutory provisions; cross references.  
45.4457-1 Cross references.

#### Subpart C—Occupational Tax on Coin-Operated Devices

- 45.4461 Statutory provisions; imposition of tax.  
45.4461-1 Imposition of tax.  
45.4461-2 Rates of tax.  
45.4462 Statutory provisions; definition of coin-operated amusement or gaming device.  
45.4462-1 Definition of coin-operated amusement or gaming devices.  
45.4463 Statutory provisions; administrative provisions; trade or business.  
45.4463-1 Cross references.

#### Subpart D—Occupational Tax on Bowling Alleys, Billiard and Pool Tables

- 45.4471 Statutory provisions; imposition of tax.  
45.4471-1 Imposition and rate of tax.  
45.4472 Statutory provisions; definition.  
45.4472-1 Definition of bowling alley, billiard room, and pool room.  
45.4473 Statutory provisions; exemptions.  
45.4473-1 Exemptions.  
45.4474 Statutory provisions; cross references.  
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#### Subpart E—Oleomargarine

- 45.4591 Statutory provisions; imposition of tax.  
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45.4592(a) Statutory provisions; definitions.  
45.4592(a)-1 Definition of the term "oleomargarine".  
45.4593(a) Statutory provisions; exemptions.  
45.4593(a)-1 Exemptions.

#### Subpart F—White Phosphorus Matches

- 45.4801 Statutory provisions; imposition of tax.  
45.4801-1 Imposition and rate of tax.  
45.4802 Statutory provisions; definition of white phosphorus.  
45.4802-1 Definition of white phosphorus.  
45.4803 Statutory provisions; stamps.  
45.4803-1 Sale of stamps to qualified manufacturer.  
45.4804 Statutory provisions; requirements on manufacturers.  
45.4804-1 Packing and stamping of white phosphorus matches.  
45.4804-2 Factory number.  
45.4804-3 Manufacturer's sign.  
45.4804-4 Separate factories for taxable and nontaxable matches.  
45.4804-5 Factory number required on each package.  
45.4804-6 Caution label.  
45.4804-7 Manufacturer's bond.  
45.4804-8 Registry by manufacturer.  
45.4804-9 Inventory to be made at commencement of business, on July 1 of each year, and at the time of closing.

- Sec.  
45.4804-10 Daily records.  
45.4804-11 Quarterly return.  
45.4805 Statutory provisions; importation and exportation.  
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#### Subpart C—Adulterated and Process or Renovated Butter

##### TAX ON PRODUCTS

- 45.4811 Statutory provisions; imposition of tax.  
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45.4814-2 Marking process or renovated butter.  
45.4814-3 Caution notice; placement upon packages.  
45.4814-4 Factories.  
45.4814-5 Bonding.  
45.4815(a) Statutory provisions; requirements applicable to dealers; selling requirements.  
45.4815(a)-1 Selling and buying requirements applicable to adulterated butter.  
45.4815(b) Statutory provisions; requirements applicable to dealers; books of wholesale dealers.  
45.4816 Statutory provisions; exportation of adulterated butter.  
45.4816-1 Exemption in case of exportation of adulterated butter.  
45.4817 Statutory provisions; inspection of process or renovated butter.  
45.4817-1 Inspection of process or renovated butter.  
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45.4818-1 Administrative decisions relating to adulterated butter.  
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##### OCCUPATIONAL TAX

- 45.4821 Statutory provisions; imposition of tax.  
45.4821-1 Imposition and rate of tax.  
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45.4821-3 Requirement with respect to wholesale dealers in adulterated butter.  
45.4821-4 Exemptions as wholesale dealer.  
45.4821-5 Requirements with respect to retail dealers in adulterated butter.  
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45.4822 Statutory provisions; cross references.  
45.4822-1 Cross references.  
45.4826 Statutory provisions; definitions.  
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45.4826-3 Preservatives.  
45.4826-4 Labeled butter.  
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## Subpart H—Filled Cheese

## TAX ON PRODUCTS

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45.4831 Statutory provisions; imposition of tax.  
45.4831-1 Imposition and rate of tax.  
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45.4833 Statutory provisions; requirements applicable to manufacturers.  
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45.4834 Statutory provisions; requirements applicable to wholesale and retail dealers.  
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## OCCUPATIONAL TAX

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45.4853-1 Form and validity of contracts.  
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45.4862 Statutory provisions; definition of bona fide spot markets.  
45.4863 Statutory provisions; basis grade contracts.  
45.4863-1 Exemption of basis grade contracts, tendered grade contracts, and specific grade contracts.  
45.4864 Statutory provisions; tendered grade contracts.  
45.4864-1 Exemption of tendered grade contracts.  
45.4865 Statutory provisions; specific grade contracts.  
45.4865-1 Exemption of specific grade contracts.  
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45.4871-1 Method of payment.  
45.4872 Statutory provisions; collection and enforcement.  
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45.4872-3 Form of record.  
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45.4872-6 Returns to be made by clearing associations.  
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## Sec.

- 45.4873 Statutory provisions; liability of principal for acts of agent.  
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45.4894-2 Abatement or refund of tax attributable to profits realized in connection with transactions in silver foreign exchange.  
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45.6011 (a)-7 Cross references.  
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45.6061-1 Signing of returns and other documents.  
45.6065 Statutory provisions; verification of returns.  
45.6065-1 Verification of returns.  
45.6071 Statutory provisions; time for filing returns and other documents.  
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45.6101 Statutory provisions; period covered by returns or other documents.  
45.6101-1 Period covered by returns or other documents.  
45.6151 Statutory provisions; time and place for paying tax shown on returns.  
45.6151-1 Time and place for paying special taxes.  
45.6161 (a) (1) Statutory provisions; extension of time for paying tax.  
45.6161 (a) (1)-1 Extension of time for paying tax shown on return.  
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45.6804-1 Attachment and cancellation.  
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45.6806 Statutory provisions; posting occupational tax stamps.  
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45.7011-1 Registrations—persons paying a special tax.  
45.7011-2 Registration in case of change of ownership or location.  
45.7011-3 Registration; other requirements.  
45.7208 Statutory provisions; offenses relating to stamps.  
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45.7233 Statutory provisions; failure to pay, or attempt to evade payment of, tax on cotton futures, and other violations.

Sec.

- 45.7234 Statutory provisions; violations of laws relating to oleomargarine or adulterated butter operations.
- 45.7234-1 Violations of laws relating to oleomargarine or adulterated butter operations.
- 45.7235 Statutory provisions; violations of laws relating to adulterated butter and process or renovated butter.
- 45.7236 Statutory provisions; violation of laws relating to filled cheese.
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- 45.7263 Statutory provisions; penalties relating to cotton futures.
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- 45.7265 Statutory provisions; other offenses relating to oleomargarine or adulterated butter operations.
- 45.7265-1 Other offenses relating to oleomargarine or adulterated butter operations.
- 45.7266 Statutory provisions; offenses relating to filled cheese.
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- 45.7273(a) Statutory provisions; penalties for offenses relating to special taxes; general rule.
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- 45.7326(a) Statutory provisions; disposals of forfeited or abandoned property in special cases.
- 45.7328 Statutory provisions; confiscation of matches exported.
- 45.7492 Statutory provisions; enforceability of cotton futures contracts.
- 45.7493 Statutory provisions; immunity of witnesses in cases relating to cotton futures.
- 45.7510 Statutory provisions; exemption from tax of domestic goods purchased for the United States.
- 45.7510-1 Withdrawal of filled cheese and playing cards from factories, free of tax, for use of the United States.
- 45.7510-2 Evidence required to establish exemption.
- 45.7510-3 Branding.
- 45.7641 Statutory provisions; supervision of operations of certain manufacturers.
- 45.7641-1 Inapplicability.
- 45.7701 Statutory provisions; definitions.
- 45.7805 Statutory provisions; rules and regulations.
- 45.7805-1 Promulgation of regulations.

### Subpart A—Introduction

#### § 45.0-1 Introduction.

(a) *In general.* The regulations in this part (Part 45, Subchapter D, Chapter 1, Title 26 (1954), Code of Federal Regulations) are designated "Miscellaneous Stamp Tax Regulations". The regulations relate to the taxes imposed by Subchapters A, B, and C of Chapter 36, Subchapter F of Chapter 38, Subchapters B, C, D, and F of Chapter 39 of the Internal Revenue Code of 1954, as amended, and to certain general provisions relating to occupational taxes contained in Chapter 40 of such Code and to certain related administrative provisions

of Subtitle F of the Code. For a reference to the various taxes to which the regulations in this part relate, see paragraph (b) of this section and § 45.0-3. References in these regulations to the "Internal Revenue Code" or the "Code" are references to the Internal Revenue Code of 1954, as amended, unless otherwise indicated. References to a section or other provision of law are references to a section or other provision of the Internal Revenue Code, as amended, unless otherwise indicated.

(b) *Division of regulations.* The regulations in this part are divided into 12 subparts. Subpart A contains provisions relating to the arrangement and numbering of the sections of the regulations in this part, general definitions and use of terms, scope of regulations, and extent to which the regulations in this part supersede prior regulations relating to the taxes imposed by Subchapters A, B, and C of Chapter 36, Subchapter F of Chapter 38, and Subchapters B, C, D, and F of Chapter 39 of the Internal Revenue Code. The other subparts of the regulations in this part and the subject matter to which they relate are as follows:

Subpart B—Playing cards.

Subpart C—Occupational tax on coin-operated devices.

Subpart D—Occupational tax on bowling alleys, billiard and pool tables.

Subpart E—Oleomargarine.

Subpart F—White phosphorus matches.

Subpart G—Adulterated and process or renovated butter.

Subpart H—Filled cheese.

Subpart I—Cotton futures.

Subpart J—Silver bullion.

Subpart K—General provisions relating to occupational taxes.

Subpart L—Administrative provisions.

(c) *Arrangement and numbering.* In general each section of the regulations in Subparts B through L is preceded by the section, subsection, or paragraph of the Internal Revenue Code which it interprets. The sections of the regulations can readily be distinguished from sections of the Code since—

(1) The sections of the regulations are printed in larger type;

(2) The sections of the regulations are preceded by a section symbol and the part number, arabic numeral 45 followed by a decimal point (§ 45.); and

(3) The sections of the Code are preceded by "Sec."

Each section of the regulations setting forth law or regulations is designated by a number composed of the part number followed by a decimal point (45.) and the number of the corresponding provision of the Internal Revenue Code. In the case of a section setting forth regulations, this designation is followed by a hyphen (-) and a number identifying such section.

#### § 45.0-2 General definitions and use of terms.

As used in the regulations in this part, unless otherwise expressly indicated—

(a) The terms defined in the provisions of law contained in the regulations

in this part shall have the meanings so assigned to them.

(b) The Internal Revenue Code of 1954 means the Act approved August 16, 1954 (68A Stat.), entitled "An Act to revise the internal revenue laws of the United States", as amended.

(c) District director means district director of internal revenue.

(d) Calendar quarter means a period of 3 calendar months ending on March 31, June 30, September 30, or December 31.

#### § 45.0-3 Scope of regulations.

The regulations in this part relate to the taxes imposed by Subchapters A, B, and C of Chapter 36, Subchapter F of Chapter 38, and Subchapter B, C, D, and F of Chapter 39 of the Code and, except where otherwise specifically provided, have application as provided in the following paragraphs:

(a) *Subpart B.* The regulations in Subpart B of this part relate to playing cards manufactured or imported, and sold, or removed for consumption or sale, by a manufacturer on or after July 1, 1960.

(b) *Subpart C.* The regulations in Subpart C of this part relate to coin-operated devices maintained for use by any person on or after July 1, 1960.

(c) *Subpart D.* The regulations in Subpart D of this part relate to the operation by any person of a bowling alley, billiard room, or pool room on or after July 1, 1960.

(d) *Subpart E.* The regulations in Subpart E of this part relate to oleomargarine imported from foreign countries on or after July 1, 1960.

(e) *Subpart F.* The regulations in Subpart F of this part relate to white phosphorous matches manufactured, sold, or removed by the manufacturer on or after July 1, 1960.

(f) *Subpart G.* The regulations in Subpart G of this part relate to (1) adulterated and process or renovated butter manufactured or sold or removed for consumption or use by the manufacturer on or after July 1, 1960, and (2) to the occupational tax imposed on (i) manufacturers, wholesalers, and retailers who deal in adulterated butter on or after July 1, 1960, and (ii) manufacturers of process or renovated butter on or after July 1, 1960.

(g) *Subpart H.* The regulations in Subpart H of this part relate to filled cheese manufactured or imported on or after July 1, 1960, and to the occupational tax imposed on manufacturers, wholesalers, and retailers who deal in filled cheese on or after July 1, 1960.

(h) *Subpart I.* The regulations of Subpart I of this part relate to contracts of sale of cotton for the future delivery entered into on or after July 1, 1960.

(i) *Subpart J.* The regulations in Subpart J of this part relate to transfers of any interest in silver bullion made on or after July 1, 1960.

(j) *Subpart K.* The regulations in Subpart K of this part deal with the general provisions relating to occupational taxes contained in Chapter 40 of the

Code and are applicable on or after July 1, 1960.

(k) *Subpart L.* The regulations in Subpart L of this part, which are prescribed under selected provision of subtitle F of the Code, relate to refunds and other administrative provisions of special application to the various taxes covered by the regulations in this part and have application in respect of any transaction within the scope of any other subpart of the regulations in this part.

**§ 45.0-4 Extent to which the regulations in this part supersede prior regulations.**

The regulations in this part, with respect to the subject matter within the scope thereof, supersede the following regulations and such regulations as prescribed and made applicable to the Internal Revenue Code by Treasury Decision 6091, signed August 16, 1954 (19 F.R. 5167, August 17, 1954):

Tax on playing cards.....	Regulations 66, 26 CFR (1939), Part 305.
Special taxes with respect to coin-operated amusement and gaming devices, bowling alleys, billiard tables, and pool tables.	Regulations 59 (1941 edition), 26 CFR (1939), Part 323.
Tax on white phosphorus matches.....	Regulations 32, 26 CFR (1939), Part 300.
Taxes on oleomargarine, adulterated butter, and process or renovated butter.	Regulations 9, (Revised April 1936), 26 CFR (1939), Part 310.
Tax on filled cheese.....	Regulations 22 (Revised August 1926), 26 CFR (1939), Part 301.
Tax on contracts of sale of cotton for future delivery.	Regulations 36 (1916 edition), 26 CFR (1939), Part 110.
Tax on transfers of interests in silver bullion.....	Regulations 85, 26 CFR (1939), Part 112.
Withdrawal of filled cheese and playing cards, from factories, free of tax, for use of the United States.	Regulations 34, 26 CFR (1939), Part 450.
Exportation without payment of tax on tobacco manufacturers, oleomargarine, adulterated butter, mixed flour, and playing cards; shipments to possessions of the United States, and drawback on tobacco manufactures and stills exported, or shipped to Puerto Rico or Philippine Islands.	Regulations 73, 26 CFR (1939), Part 451.
Removals of alcoholic liquors, tobacco products, and other articles of domestic manufacture to foreign-trade zones.	Regulations 31, 26 CFR (1939), Part 199, §§ 199.425 to 199.436, incl.

**Subpart B—Playing Cards**

**§ 45.4451 Statutory provisions; imposition of tax.**

SEC. 4451. *Imposition of tax.* There shall be imposed a tax of 13 cents per pack upon every pack of playing cards containing not more than 54 cards, manufactured or imported, and sold, or removed for consumption or sale, by a manufacturer. This tax shall be in addition to any import duties imposed on such articles of foreign manufacture.

[Sec. 4451 as originally enacted and in effect July 1, 1960]

**§ 45.4451-1 Imposition, rate and application of tax.**

(a) *Imposition of tax.* Section 4451 imposes a tax, applicable as set forth in paragraph (c) of this section and at the rates shown in paragraph (b) of this section, on playing cards manufactured or imported, and sold, or removed for consumption or sale, by a manufacturer. The tax on playing cards accrues upon removal of the cards from the factory or place where made, or upon the sale thereof prior to such removal. For definition of the term "manufacturer", see section 4452 and § 45.4452-1. For rules relating to duties, liabilities and responsibilities in respect of the tax imposed by section 4451, see sections 4454 to 4456, inclusive, and the regulations thereunder in this subpart.

(b) *Rate of tax.* The tax is imposed at the rate of 13 cents per pack upon each pack of playing cards containing not less than 2 nor more than 54 cards. Each additional 54 cards or fraction thereof in a pack constitutes a new pack on which tax must be paid at the rate of

13 cents each. For example, if a pack contains 120 cards it must be considered as constituting three packs, two packs of 54 cards each and one pack of 12 cards, and each such pack is subject to tax at the rate of 13 cents per pack or a total of 39 cents.

(c) *Application of tax—(1) In general.* The tax applies to ordinary playing cards which are used in playing games of skill or chance such as "poker", "bridge", "pinochle", "canasta", and the like, and to cards that may be used in lieu of ordinary playing cards. Cards for the games of "old-maid", "rook", "authors", and the like, differing wholly from ordinary playing cards, are not subject to tax. Miniature playing cards, playing cards with advertising matter printed thereon, and so-called "fortune-telling", "magic", or "trick", decks composed wholly or in part of playing cards or cards that may be used in lieu of playing cards are all subject to the tax.

(2) *Imported playing cards—(i) Foreign manufacture.* Except as set forth in the Customs Regulations (19 CFR 8.3 and 9.6, as amended), relating to certain importations on and after September 7, 1953, playing cards imported from foreign countries, must be tax-paid at the rate of 13 cents per pack of not more than 54 cards. Such tax is in addition to any import duty and must be paid by affixing the required stamps prior to release of the cards from customs custody.

(ii) *American goods returned.* When playing cards produced in the United States which have been duly exported without payment of tax are reimported, they are liable to customs duty equal to

the tax imposed by section 4451. Containers of reimported domestic playing cards shall be marked as required by Customs Regulations (19 CFR 11.4). Such packages are not required to have internal-revenue stamps affixed.

**§ 45.4452 Statutory provisions; definition of manufacturer.**

SEC. 4452. *Definition of manufacturer.* Every person who offers or exposes for sale playing cards, whether the articles so offered or exposed are of foreign manufacture and imported or are of domestic manufacture, shall be deemed the manufacturer thereof, and subject to all the duties, liabilities, and penalties imposed by law in regard to the sale of domestic articles without the use of the proper stamps denoting the tax paid thereon.

[Sec. 4452 as originally enacted and in effect July 1, 1960]

**§ 45.4452-1 Who is a manufacturer.**

The term "manufacturer", when used in any provision of the regulations in this part having application to the tax on playing cards, shall include the following persons:

(a) Any person who manufactures playing cards for sale or consumption;

(b) Any person who packs or repacks playing cards for sale;

(c) Any person who offers or exposes for sale packs of playing cards, either domestic or imported, without the use of the proper stamps denoting payment of the tax thereon;

(d) Any person who cuts playing cards from large lithographed sheets and finishes them;

(e) Any person who cleans, gilds, re-assembles, or repacks playing cards previously tax paid; and

(f) Any person who resells packs of playing cards on which the stamps have been broken. In such case each pack so sold must be restamped.

For requirement relating to registration of a manufacturer of playing cards, see section 4455 and § 45.4455-1.

**§ 45.4453 Statutory provisions; exemption in case of exportation.**

SEC. 4453. *Exemption in case of exportation.* Playing cards may be removed from the place of manufacture for export to a foreign country or for shipment to a possession of the United States without payment of tax, or affixing stamps thereto, under such rules and regulations and the filing of such bonds as the Secretary or his delegate may prescribe.

[Sec. 4453 as originally enacted and in effect July 1, 1960]

**§ 45.4453-1 Exemption in case of exportation.**

(a) *Cards removed for exportation—(1) In general.* The tax imposed by section 4451 shall not apply in the case of the removal of playing cards from the place of manufacture for the purpose of exportation to a foreign country or shipment to a possession of the United States and in due course so exported or shipped. Such removal in every instance must be made by shipment direct from the place of manufacture without any stoppage in transit. Packs of playing cards sent to a foreign country or a possession of the United States as sam-

ples must comply with the provisions of this section in order to be exempt.

(2) *Definition of exportation.* Exportation means the severance of an article from the mass of things belonging within the United States with the intention of uniting it with the mass of things belonging within some foreign country or within a possession of the United States. The character of a shipment will be determined by the intention with which it is made and it assumes the character of an export to a foreign country or shipment to a possession of the United States only where destined for, and intended for use in, a foreign country or possession of the United States, as the case may be.

(3) *Responsibility for exportation of playing cards.* Responsibility for compliance with the provisions of this section with respect to the removal of playing cards, without payment of tax, for export, and for the proper exportation of such playing cards shall rest upon the manufacturer thereof.

(4) *Liability for tax on playing cards.* The manufacturer of the playing cards (see § 45.4452-1 for definition of a manufacturer) shall be liable for the tax imposed thereon by section 4451 if the provisions of this section are not complied with.

(5) *Removal for export.* (i) To exempt from tax a removal of playing cards from the place of manufacture for export both of the following conditions must be met: (a) The playing cards so removed must be identified as having been removed from the place of manufacture by the manufacturer for export, and (b) the playing cards so removed must be exported in due course.

(ii) Playing cards will be regarded as having been removed from the place of manufacture by the manufacturer for export if the manufacturer has in his possession at the time of removal from the place of manufacture a written order or contract of sale showing that the manufacturer is to ship the playing cards to a foreign destination or to a possession of the United States.

(iii) The written order or contract of sale referred to in subdivision (ii) of this subparagraph suspends liability for payment of the tax by the manufacturer for such removal from the place of manufacture for export for a period of 6 months from the date of removal of such playing cards.

(6) *Proof of exportation—(i) Other than by parcel post.* Exportation may be evidenced by (a) a copy of the export bill of lading issued by the delivering carrier, or (b) a certificate by the agent or representative of the export carrier showing actual exportation of the playing cards, or (c) a certificate of landing signed by a customs officer of a foreign country or possession of the United States to which the playing cards are exported, or (d) where such foreign country or possession of the United States has no customs administration, a statement of the foreign consignee showing receipt of the playing cards. If, within a period of six months from the date of removal of such playing cards, the manufacturer has not received and attached to the order or contract

proper "proof of exportation", then the temporary suspension of the liability for the payment of the tax ceases and such liability shall become immediately due and payable. Such tax shall be paid to the district director for the district in which is located the place of manufacture from which the shipment is made, with sufficient information to identify the taxpayer and the nature and purpose of the payment. However, if proof of exportation later becomes available, a claim for refund of any tax paid may be filed on Form 843, but such action must be taken within the three-year period prescribed by section 6511.

(ii) *Exportation by parcel post.* If playing cards are exported by parcel post, the manufacturer thereof shall have a statement prepared for use with each package so exported on which shall be shown such information as the destination, order or invoice number, the contents of the package, the name of the vendee, etc. Upon mailing the package described in the statement, the manufacturer shall have the statement stamped by the local postmaster as evidence of said package having been received by him for exportation by parcel post. A waiver of the manufacturer's right to withdraw such package from the mails shall be stamped or written on each package and such waiver shall be signed by the manufacturer making the shipment.

(b) *Bond.* If the district director deems it necessary in order to protect the revenue, a bond may be required of any manufacturer removing playing cards from the place of manufacture for export to a foreign country or for shipment to a possession of the United States. The penal sum of such bond shall be in an amount specified by the district director in a notice mailed to the manufacturer. For other provisions relating to bonds, see §§ 301.7101 and 301.7101-1 of this chapter (Regulations on Procedure and Administration).

(c) *Miscellaneous—(1) Diversion of shipment to another export consignee.* After removal of a shipment of playing cards from the place of manufacture for export in accordance with the provisions of paragraph (a) (5) (ii) of this section, the manufacturer of such playing cards may divert the shipment to another consignee for export provided he has in his possession a written order or contract of sale as provided in paragraph (a) (5) (ii) of this section from such other consignee.

(2) *Return of shipment to factory.* In case a consignee, for whom a manufacturer removes playing cards from his place of manufacture in accordance with a written order or contract of sale for export, modifies or cancels his written order or contract of sale for export, the manufacturer may return the shipment of such playing cards to his place of manufacture provided he maintains adequate records relating to such return.

#### § 45.4453-2 Removal to foreign-trade zones.

(a) *In general.* Playing cards may be removed from the place of manufacture without having stamps affixed thereto for

delivery to a foreign-trade zone for exportation. Such removal and delivery thereof to a foreign-trade zone is considered an exportation.

(b) *Definition of foreign-trade zone.* "Foreign-trade zone" or "zone," as used in this section, means a foreign-trade zone established and operated pursuant to the Act of June 18, 1934 (48 Stat. 998), as amended by Pub. Law 566, 81st Cong. (64 Stat. 246).

(c) *Proof of delivery to a foreign-trade zone.* A manufacturer of playing cards who removes such playing cards from the place of manufacture for delivery to a foreign-trade zone without affixing stamps thereto shall maintain adequate records of all such removals and shall keep sufficient written proof of such removals and deliveries as may be necessary to substantiate actual delivery of the playing cards to the foreign-trade zone. The records referred to in the preceding sentence shall be retained by the manufacturer and made available for inspection by any revenue officer upon his request.

#### § 45.4454 Statutory provisions; liability for tax.

SEC. 4454. *Liability for tax.* The tax imposed by this subchapter shall be paid by any person who makes, sells, removes, consigns, or ships any playing cards, or for whose use or benefit the same are made, removed, consigned, or shipped.

[Sec. 4454 as originally enacted and in effect July 1, 1960]

#### § 45.4454-1 Liability for tax.

The tax imposed under section 4451 is payable by the person who makes, sells, removes, consigns, or ships any playing cards, or for whose use or benefit such playing cards are made, removed, consigned, or shipped. In the case of playing cards of foreign manufacture the tax imposed by section 4451 is payable by the importer or consignee of such playing cards.

#### § 45.4455 Statutory provisions; registration.

SEC. 4455. *Registration.* Every manufacturer of playing cards shall register with the official in charge of the collection district his name or style, place of residence, trade, or business, and the place where such business is to be carried on.

[Sec. 4455 as originally enacted and in effect July 1, 1960]

#### § 45.4455-1 Manufacturers to register.

(a) *In general.* Every manufacturer of playing cards, as defined in section 4452, shall register with the district director for the district in which is located his principal place of business, his name or style, place of residence, trade or business, the location of his factory, and the location of his principal place of business. Application for registry should be made on Form 277. The application for registry shall be prepared in accordance with the form, instructions, and regulations applicable thereto. Upon approval of the application, the district director will furnish the applicant a certificate of registry on Form 382 which shall be conspicuously posted in his principal place of business.

(b) *Prior registrations or applications.* In any case in which a manufacturer of playing cards has made application for registry under corresponding provisions of prior regulations, or holds a Certificate of Registry in effect under such prior regulations, such manufacturer is not required to make application for registry under this section, unless the district director furnishes him with written notification that such application is required. In such event, the application for registry shall be made at the time, in the form, and in the manner prescribed in such written notification.

#### § 45.4456 Statutory provisions; stamps.

Sec. 4456. *Stamps*—(a) *Sale.* The Secretary shall cause the stamps on playing cards to be sold only to those manufacturers as have registered as required by law, and to importers of playing cards, who are required to affix the stamps to imported playing cards.

(b) *Accounts.* The Secretary shall cause to be kept accounts of the number and denominate values of the stamps sold to each manufacturer and importer.

[Sec. 4456 as originally enacted and in effect July 1, 1960]

#### § 45.4456-1 Stamps for payment of tax.

Stamps have been prepared pursuant to law for payment of the tax on playing cards, and have been furnished to district directors for sale only to such manufacturers as have registered as required by law and to importers of playing cards.

#### § 45.4456-2 Purchase of stamps.

(a) *Domestic manufacturer.* Manufacturers must use Form 218 in ordering playing card stamps. This form is printed by the Government only and furnished to district directors for distribution. Each such order form must be accompanied by the proper remittance for the full amount of the order. Unless otherwise directed, stamps will be sent by ordinary mail at the risk of the purchaser. If ordered to be sent by certified or registered mail, the order must be accompanied by the requisite additional amount to pay the fee for such service. Stamps will also be forwarded by express at the expense of the taxpayer.

(b) *Owner or consignee of imported playing cards.* The owner or consignee of imported playing cards shall purchase stamps for use in the payment of the tax on such cards from the district director for the district in which is located the office of the collector of customs where the customs entry is filed. Except as provided in paragraph (b) of § 45.4456-3 (relating to the purchase of stamps for affixing to packages in foreign countries), Form 923, certified by the customs officer having custody of such cards, shall be used in ordering such stamps. A copy of each such order form which has been marked paid by the district director shall be retained by the owner or consignee for three years following the close of the year in which the stamps were purchased, and made available for inspection by any revenue officer upon his request. See paragraph (a) of this section for details other than the form to be used in making the order.

#### § 45.4456-3 Affixing stamps.

(a) *Domestic manufacturer.* (1) Each pack of playing cards, except as otherwise provided in this section, shall, prior to sale, or before removal from the place where manufactured, packed, reassembled, or repacked, have securely affixed thereto proper internal-revenue stamp or stamps of such denomination as will cover fully the tax thereon. Such stamp or stamps shall be affixed in such manner as to seal the pack and to necessitate the stamp or stamps being torn in two pieces when the pack is opened.

(2) Where playing cards are packed in leather, plush, plastic, ornamental, or metal cases, the stamps denoting payment of the tax thereon may be affixed to inside wrappers instead of to the cases proper, provided one of the following methods of packing and stamping is used:

(i) Paper bands not less than one-half inch wide must be extended around the entire pack of cards, both the long and short way, and securely fastened together with paste or mucilage at the intersection on the back of the pack so that the pack cannot be separated without breaking the bands. The internal-revenue stamp must be affixed to the pack in such manner that it will adhere partly to one of the bands and partly to the back of the top card so that removal of the bands will necessitate tearing the stamp in two. If desired, an extra blank card may be placed on top of the pack for the purpose of attaching a part of the stamp thereto.

(ii) The package of cards must be completely wrapped with paper, cellophane, or other acceptable wrapper, securely sealed with paste or mucilage, and the internal-revenue stamp affixed across the place where the wrapper is sealed in such manner as to necessitate tearing the stamp in two when the cards are removed from the wrapper.

(3) Where packages of playing cards are sent out from the factory duly stamped and are thereafter opened and the stamp broken, the cards cannot be returned to the package and sold under a broken stamp. In such case a new stamp must be affixed to each package and duly canceled. If cards are reassembled from packs on which tax has been paid, each deck must show the requisite stamp.

(b) *Imported playing cards*—(1) *Stamps affixed in foreign countries.* Stamps for use in payment of the tax on imported playing cards may be affixed to such cards in the foreign country in which manufactured, provided the laws of such foreign country grant a like privilege in respect of playing cards manufactured in the United States and exported to such country. An importer desiring to have the stamps for use in payment of the tax on imported playing cards affixed to these cards in such foreign country shall file with any district director an order for the necessary stamps. No particular form for such order is prescribed, but the order shall show (i) the name and address of the person by whom such playing cards are to be imported, (ii) the name of the foreign country, (iii) the quantity of

playing cards to be imported, and (iv) the number and value of the stamps, and the total value of all of the stamps. A copy of such order which has been marked paid by the district director shall be retained by the owner or consignee for three years following the close of the year in which the stamps were purchased, and made available for inspection by any revenue officer upon his request. The details with respect to the purchase of stamps set forth in paragraph (a) of § 45.4456-2, other than the form to be used, are applicable to the orders described in this paragraph. The method of affixing stamps prescribed in paragraph (a) of this section is hereby made applicable to stamps affixed in foreign countries.

(2) *Stamps not affixed before importation.* In the case of imported playing cards to which internal-revenue stamps have not been affixed before importation, such stamp shall be affixed by the owner or consignee while the playing cards are in the hands of the proper customs officer, and such cards shall not pass out of the custody of such officer until the requisite stamps are affixed and canceled. The method of affixing stamps to domestic playing cards prescribed in paragraph (a) of this section is hereby made applicable to stamps affixed in accordance with the provisions of this subparagraph.

#### § 45.4456-4 Abandoned or forfeited playing cards.

All playing cards which have been abandoned, forfeited, or seized under warrant of distraint, and which are sold by order of court or of any Government officer for the benefit of the United States, or by a sheriff, constable, or other municipal officer under any writ, execution, or process or order of any court, shall, before delivery by such officer, be properly packed and have the requisite stamps affixed and canceled. With reference to the procurement and cancellation of stamps in cases of sales referred to in this section, instructions will be given as to the procedure according to the facts in the individual case.

#### § 45.4456-5 Cancellation of stamps.

(a) *Domestic manufacturer.* Each stamp affixed to a package of playing cards must be canceled by writing or printing in ink across the face of the stamp the initials of the manufacturer.

(b) *Imported playing cards.* Each stamp affixed to imported playing cards must be canceled by writing or printing in ink across the face of the stamp the initials of the owner or consignee and the date on which the stamp was affixed.

#### § 45.4456-6 Redemption of stamps.

Playing card stamps, properly affixed to packs when removed from the place of manufacture, may not be redeemed once the cards have been removed from the premises of the manufacturer.

#### § 45.4457 Statutory provisions; cross references.

Sec. 4457. *Cross references.* For penalties and other administrative provisions applicable to this subchapter, see subtitle F.

[Sec. 4457 as originally enacted and in effect July 1, 1960]

**§ 45.4457-1 Cross references.**

(a) For penalties for offenses relating to stamps, see § 45.7208.

(b) For penalty for unauthorized use or sale of stamps, see § 45.7209.

(c) For penalties for other offenses relating to stamps, see § 45.7271.

(d) For penalty for failure to register as required by section 4455, see § 45.7272.

(e) For other administrative provisions relating to the tax imposed on playing cards, see Subpart L.

(f) For regulations relating to exemption from tax in case of sale for use by the United States, see §§ 45.7510-1 to 45.7510-3, inclusive.

**Subpart C—Occupational Tax on Coin-Operated Devices****§ 45.4461 Statutory provisions; imposition of tax.**

Sec. 4461. *Imposition of tax*—(a) *In general.* There shall be imposed a special tax to be paid by every person, who maintains for use or permits the use of, on any place or premises occupied by him, a coin-operated amusement or gaming device at the following rates:

(1) \$10 a year, in the case of a device defined in paragraph (1) of section 4462 (a);

(2) \$250 a year, in the case of a device defined in paragraph (2) of section 4462 (a); and

(3) \$10 or \$250 a year, as the case may be, for each additional device so maintained or the use of which is so permitted. If one such device is replaced by another, such other device shall not be considered an additional device.

(b) *Reduced rate.* In the case of a device which is defined in paragraph (2) of section 4462 (a) and which is commonly known as a claw, crane, or digger machine, the tax imposed by subsection (a) shall be at the rate of \$10 a year (in lieu of \$250 a year) if—

(1) The charge for each operation of such device is not more than 10 cents,

(2) Such device never dispenses a prize other than merchandise of a maximum retail value of \$1, and with respect to such device there is never a display or offer of any prize or merchandise other than merchandise dispensed by such machine,

(3) Such device is actuated by a crank and operates solely by means of a nonelectrical mechanism, and

(4) Such device is not operated other than in connection with and as part of carnivals or county or State fairs.

[Sec. 4461 as amended and in effect July 1, 1960]

**§ 45.4461-1 Imposition of tax.**

(a) *In general.* Section 4461 imposes a special tax to be paid by every person who maintains for use or permits the use of, on any place or premises occupied by him, a coin-operated amusement or gaming device described in section 4462 and § 45.4462-1. Any agency or instrumentality of the United States such as an Army exchange, Navy exchange, etc., is liable to such special tax unless granted by statute a specific exemption therefrom. Except as otherwise provided in paragraph (b) of this section, liability is incurred in respect of each coin-operated amusement or gaming device maintained for use, or permitted to be used, by a person on his premises during a particular year or portion thereof. Tax liability applies with respect to a device installed on the taxpayer's premises even though previously used on the premises

of another person, and even though special tax for the same year or period or part thereof was paid by such other person with respect thereto.

(b) *Replacements.* If a taxpayer replaces a device with respect to which he has paid special tax with a like device, no additional tax is payable. For example, a cigar store proprietor who maintains on the premises two coin-operated amusement devices with respect to which he has paid special tax has these two machines removed and replaces them with two coin-operated amusement devices of a more modern design. In this case no additional special tax is payable. However, if the replacing article is placed in operation before operation of the replaced article is discontinued, additional tax liability is incurred. If coin-operated amusement devices are replaced by coin-operated gaming devices, or gaming devices are replaced by amusement devices, liability to special tax at the rate applicable to the replacing machines or devices is incurred, and no credit is allowable for the special tax paid with respect to the replaced machines or devices.

**§ 45.4461-2 Rates of tax.**

(a) *In general.* Except as otherwise provided in paragraph (b) of this section, the special taxes under section 4461 are imposed at the following rates:

(1) With respect to each "coin-operated amusement or gaming device" as defined in section 4462(a)(1)—\$10 per year per device.

(2) With respect to each "coin-operated amusement or gaming device" defined in section 4462(a)(2)—\$250 per year per device.

(b) *Reduced rate.* In the case of a device which is defined in paragraph (2) of section 4462(a) and which is commonly known as a claw, crane, or digger machine, the rate of tax shall be \$10 per year per device (in lieu of \$250 a year) if—

(1) The charge for each operation of such device is not more than 10 cents,

(2) Such device never dispenses a prize other than merchandise of a maximum retail value of \$1, and with respect to such device there is never a display or offer of any prize or merchandise other than merchandise dispensed by such machine,

(3) Such device is actuated by a crank and operates solely by means of a nonelectrical mechanism, and

(4) Such device is not operated other than in connection with and as part of carnivals or county or State fairs.

**§ 45.4462 Statutory provisions; definition of coin-operated amusement or gaming device.**

Sec. 4462. *Definition of coin-operated amusement or gaming device*—(a) *In general.* For purposes of this subchapter, the term "coin-operated amusement or gaming device" means—

(1) Any machine which is—

(A) A music machine operated by means of the insertion of a coin, token, or similar object,

(B) A vending machine operated by means of the insertion of a one cent coin, which, when it dispenses a prize never dispenses a prize of a retail value of, or entitles a person to receive a prize of a retail value of, more than 5 cents, and if the only prize dis-

pensed is merchandise and not cash or tokens,

(C) An amusement machine operated by means of the insertion of a coin, token, or similar object, but not including any device defined in paragraph (2) of this subsection, or

(D) A machine which is similar to machines described in subparagraph (A), (B), or (C), and is operated without the insertion of a coin, token, or similar object; and

(2) Any machine which is—

(A) A so-called "slot" machine which operates by means of the insertion of a coin, token, or similar object and which, by application of the element of chance, may deliver, or entitle the person playing or operating the machine to receive cash, premiums, merchandise, or tokens, or

(B) A machine which is similar to machines described in subparagraph (A) and is operated without the insertion of a coin, token, or similar object.

(b) *Exclusion.* The term "coin-operated amusement or gaming device" does not include bona fide vending machines in which are not incorporated gaming or amusement features.

[Sec. 4462 as amended and in effect July 1, 1960]

**§ 45.4462-1 Definition of coin-operated amusement or gaming devices.**

(a) *Devices within scope of section 4462(a)(1)*—(1) *In general.* Section 4462(a)(1) includes within its scope any machine which is—

(i) A music machine operated by means of the insertion of a coin, token, or similar object,

(ii) A vending machine operated by means of the insertion of a one-cent coin, which, when it dispenses a prize, never dispenses a prize of a retail value of, or entitles a person to receive a prize of a retail value of, more than 5 cents, and if the only prize dispensed is merchandise and not cash or tokens,

(iii) An amusement machine operated by means of the insertion of a coin, token, or similar object, but not including any device defined in paragraph (b) of this section, or

(iv) A machine which is similar to machines described in subdivisions (i), (ii), and (iii) of this subparagraph, and is operated without the insertion of a coin, token, or similar object.

(2) *Examples of machines or devices within scope of section 4462(a)(1).* The following devices and machines illustrate the type of machines or devices within the scope of section 4462(a)(1):

(i) Coin-operated athletic-type machines such as punching bags, hitting machines, lifters, shockers and grip machines.

(ii) A mechanical horse or other similar device which is activated by the insertion of a coin.

(iii) Coin-operated still or moving picture machines.

(iv) A coin-operated device which resembles a billiard or pool table but which has posts or holes in its playing surfaces precluding its use as a billiard or pool table.

(v) A coin-operated vending machine, which, in addition to delivering chewing gum balls, has incorporated therein an amusement feature, such as a pistol and a target.

(b) *Devices within scope of section 4462(a)(2)*—(1) *In general.* Section

4462(a) (2) includes within its scope any machine which is—

(i) A so-called "slot" machine which operates by means of the insertion of a coin, token, or similar object and which, by application of the element of chance, may deliver, or entitle the person playing or operating the machine to receive cash, premiums, merchandise, or tokens, or

(ii) A machine which is similar to machines described in subdivision (i) of this subparagraph and is operated without the insertion of a coin, token, or similar object.

(2) *Examples of machines or devices within scope of section 4462(a) (2).* The following devices and machines illustrate the type of machines or devices within the scope of section 4462(a) (2):

(i) A machine which is operated by means of the insertion of a coin, token, or similar object and which, even though it does not dispense cash or tokens, has the features and characteristics of a gaming device whether or not evidence exists as to actual payoffs.

(ii) A so-called crane machine, claw digger or rotary merchandising type device which is operated by the insertion of a coin and adjustment of a control lever for the purpose of removing from the machine, by gripping, pushing or other manipulation articles such as figurines, lighters, etc., in the machine.

(iii) A pinball machine equipped with a push button for releasing free play and a meter for recording the plays so released, or equipped with provisions for multiple coin insertion for increasing the odds.

(iv) Pinball machines in connection with which free plays are redeemed in cash, tokens, or merchandise, or prizes, are offered to any person for the attainment of designated scores.

(v) A coin-operated machine that delivers a ticket that entitles the player to a prize if the poker hand symbolized on the ticket constitutes a winning hand.

(c) *Exclusion.* (1) Section 4462(b) specifically excludes from the term "coin-operated amusement or gaming device" a bona fide vending machine in which are not incorporated gaming or amusement features.

(2) *Examples.* The provisions of subparagraph (1) of this paragraph may be illustrated by the following examples:

(i) A vending machine, operated by the insertion of a one cent coin, which occasionally dispenses along with gum sold by means of the machine, toy charms of negligible value.

(ii) A recording machine which, upon insertion of a coin, records a person's voice, plays the record back, and then delivers the record to the purchaser.

#### § 45.4463 Statutory provisions; administrative provisions; trade or business.

Sec. 4463. *Administrative provisions*—(a) *Trade or business.* An operator of a place or premises who maintains for use or permits the use of any coin-operated device shall be considered, for purposes of chapter 40, to be engaged in a trade or business in respect of each such device.

(b) *Cross reference.* For penalties and other administrative provisions applicable to

this subchapter, see chapter 40 and subtitle F.

[Sec. 4463 as originally enacted and in effect July 1, 1960]

#### § 45.4463-1 Cross references.

(a) For provisions relating to registration in case of a trade or business on which a special tax is imposed, see §§ 45.7011 and 45.7011-1.

(b) For requirements relating to posting occupational tax stamps, see §§ 45.6806 and 45.6806-1.

(c) For provisions relating to penalties and other administrative provisions applicable in respect of the special tax imposed with respect to coin-operated amusement and gaming devices, see Subpart K and the applicable provisions of Subpart L of this part.

### Subpart D—Occupational Tax on Bowling Alleys, Billiard and Pool Tables

#### § 45.4471 Statutory provisions; imposition of tax.

Sec. 4471. *Imposition of tax.* There shall be imposed a special tax to be paid by every person who operates a bowling alley, billiard room, or pool room at the rate of \$20 a year for each bowling alley, billiard table, or pool table.

[Sec. 4471 as originally enacted and in effect July 1, 1960]

#### § 45.4471-1 Imposition and rate of tax.

(a) *Imposition of tax.* Section 4471 imposes a special tax to be paid by every person who operates a bowling alley, billiard room, or pool room. If a taxpayer replaces an alley bed, billiard table, or pool table with respect to which he has paid special tax with another article of the same or different kind subject to this tax, for example, replaces an alley bed either with another alley bed or a billiard or pool table, no additional tax is payable. However, if the replacing article is placed in operation before operation of the replaced article is discontinued additional tax liability is incurred.

(b) *Rate of tax.* The rate of special tax imposed by section 4471 is \$20 per year for each bowling alley, billiard table, or pool table. Liability is incurred in respect of each alley bed, billiard table, or pool table maintained for use on the operator's premises during a particular year or portion thereof.

#### § 45.4472 Statutory provisions; definition.

Sec. 4472. *Definition.* For the purpose of section 4471 every building or place where bowls are thrown or where games of billiards or pool are played, except in private homes, shall be regarded as a bowling alley, billiard room, or pool room, respectively.

[Sec. 4472 as originally enacted and in effect July 1, 1960]

#### § 45.4472-1 Definition of bowling alley, billiard room, and pool room.

For the purpose of section 4471 every building or place where bowls are thrown or where games of billiards or pool are played, except a private home, shall be regarded as a bowling alley, billiard room, or pool room, respectively.

#### § 45.4473 Statutory provisions; exemptions.

Sec. 4473. *Exemptions.* The tax imposed by section 4471 shall not apply with respect to—

(1) *Hospitals.* Any billiard table or pool table in a hospital if no charge is made for the use of such table; or

(2) *Armed Forces.* Any bowling alley, billiard table, or pool table maintained exclusively for the use of members of the Armed Forces on any property owned, reserved, or used by, or otherwise acquired for the use of, the United States if no charge is made for their use; or

(3) *Certain organizations.* Any bowling alley, billiard table, or pool table operated—

(A) By, and located on the premises of, an organization not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual, or

(B) By any agency or instrumentality of the United States,

if no charge is made for the use of such alley or table.

[Sec. 4473 as amended and in effect July 1, 1960]

#### § 45.4473-1 Exemptions.

(a) *Hospitals.* The special tax imposed under section 4471 shall not apply in the case of a billiard or pool table operated in a hospital if no charge is made for the use of such table. The term "hospital", as used in this section, does not include a home for the aged even though the home has facilities to care for residents who become ill.

(b) *Armed Forces.* The special tax imposed under section 4471 shall not apply with respect to any bowling alley, billiard table, or pool table maintained exclusively for the use of members of the Armed Forces on any property owned, reserved, or used by, or otherwise acquired for the use of, the United States if no charge is made for their use. The term "Armed Forces" includes all regular and reserve components of the uniformed services which are subject to the jurisdiction of the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force. The term also includes the Coast Guard.

(c) *Certain organizations.* The special tax imposed under section 4471 shall not apply with respect to any bowling alley, billiard table, or pool table—

(1) Operated by, and located on the premises of, an organization not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual provided no charge is made for the use of such alley or table.

(2) Operated by any agency or instrumentality of the United States provided no charge is made for the use of such alley or table.

(d) *Charge for use.* The exemption provided by section 4473 in respect of the tax imposed by section 4471 does not apply if any charge is made for the use of the bowling alley, billiard table or pool table, even though the other conditions are met. Thus, an exemption does not exist where, as a condition precedent to using an alley or table, a

charge is collected from the player or players as, for example, where an amount is collected from a player using a bowling alley for payment, directly or indirectly, to a pin-setter.

**§ 45.4474 Statutory provisions; cross references.**

SEC. 4474. *Cross references.* For penalties and administrative provisions applicable to this subchapter, see chapter 40 and subtitle F.

[Sec. 4474 as originally enacted and in effect July 1, 1960]

**§ 45.4474-1 Cross references.**

(a) For provisions relating to registration in case of a trade or business on which a special tax is imposed, see §§ 45.7011 and 45.7011-1.

(b) For requirements relating to posting occupational tax stamps, see §§ 45.6806 and 45.6806(a)-1.

(c) For provisions relating to penalties and other administrative provisions applicable in respect of the special tax imposed with respect to bowling alleys, billiard and pool tables, see Subpart K and the applicable provisions of Subpart L of this part.

**Subpart E—Oleomargarine**

**§ 45.4591 Statutory provisions; imposition of tax.**

SEC. 4591. *Imposition of tax—(a) Rate.* There is hereby imposed on all oleomargarine imported from foreign countries, in addition to any import duty imposed on the same, an internal revenue tax of 15 cents per pound, such tax to be represented by coupon stamps. The Secretary or his delegate is authorized to decide what substances, extracts, mixtures, or compounds which may be submitted for his inspection in contested cases are to be taxed under this subchapter; and his decision in matters of taxation under this subchapter shall be final.

(b) *Affixing of stamps.* The stamps shall be affixed and canceled by the owner or importer of the oleomargarine while it is in the custody of the proper custom house officers; and the oleomargarine shall not pass out of the custody of said officers until the stamps have been so affixed and canceled, but shall be put up in wooden packages, each containing not less than 10 pounds, before the stamps are affixed. Whenever it is necessary to take any oleomargarine so imported to any place other than the public stores of the United States for the purpose of affixing and canceling such stamps, the collector of customs of the port where such oleomargarine is entered shall designate a bonded warehouse to which it shall be taken, under the control of such customs officer as such collector may direct.

[Sec. 4591 as originally enacted and in effect July 1, 1960]

**§ 45.4591-1 Imposition, rate and payment of and liability for tax.**

(a) *Imposition and rate of tax.* Section 4591 imposes, in addition to any import duty, a tax of 15 cents per pound on all oleomargarine imported into the United States from any foreign country.

(b) *Payment and liability for tax.* The tax imposed under section 4591 shall be paid by the importer or owner of the imported oleomargarine by the affixing of stamps to the packages and the cancelling thereof while the oleomargarine is in the custody of the Bureau of Customs. Each stamp affixed to a package

must be cancelled by writing or printing in ink across the face of the stamp the initials of the owner or consignee and the date on which the stamp was affixed.

**§ 45.4592(a) Statutory provisions; definitions.**

SEC. 4592. *Definitions—(a) Oleomargarine.* For the purposes of section 4591, certain manufactured substances, certain extracts, and certain mixtures and compounds, including such mixtures and compounds with butter, shall be known and designated as "oleomargarine", namely: All substances known prior to August 2, 1886, as oleomargarine, oleo, oleomargarine oil, butterine, lardine, suine, and neutral; all mixtures and compounds of oleomargarine, oleo, oleomargarine oil, butterine, lardine, suine, and neutral; all lard extracts and tallow extracts; and all mixtures and compounds of tallow, beef fat, suet, lard, lard oil, fish oil or fish fat, vegetable oil, annatto, and other coloring matter, intestinal fat, and offal fat;—if (1) made in imitation or semblance of butter, or (2) calculated or intended to be sold as butter or for butter, or (3) churned, emulsified, or mixed in cream, milk, water, or [or] other liquid, and containing moisture in excess of 1 per centum or common salt.

[Sec. 4592(a) as originally enacted and in effect July 1, 1960]

**§ 45.4592(a)-1 Definition of the term "oleomargarine".**

For the purposes of the regulations in this part, certain manufactured substances, certain extracts, and certain mixtures and compounds, including such mixtures and compounds with butter shall be known and designated as "oleomargarine", namely,

(a) All substances known prior to August 2, 1886, as oleomargarine, oleo, oleomargarine oil, butterine, lardine, suine, and neutral;

(b) All mixtures and compounds of oleomargarine, oleo, oleomargarine oil, butterine, lardine, suine, and neutral;

(c) All lard extracts and tallow extracts; and

(d) All mixtures and compounds of tallow, beef fat, suet, lard, lard oil, fish oil or fish fat, vegetable oil, annatto, and other coloring matter, intestinal fat, and offal fat; if

(1) Made in imitation or semblance of butter, or

(2) Calculated or intended to be sold as butter or for butter, or

(3) Churned, emulsified, or mixed in cream, milk, water, or other liquid, and containing moisture in excess of 1 per centum or common salt.

**§ 45.4593(a) Statutory provisions; exemptions.**

SEC. 4593. *Exemption—(a) Shortening or condiments.* Section 4591 shall not apply to puff-pastry shortening not churned or emulsified in milk or cream, and having a melting point of 118 degrees Fahrenheit or more, nor to any of the following containing condiments and spices: salad dressings, mayonnaise dressings, or mayonnaise products, nor to liquid emulsion, pharmaceutical preparations, oil meals, liquid preservatives, illuminating oils, cleansing compounds, or flavoring compounds.

[Sec. 4593(a) as originally enacted and in effect July 1, 1960]

**§ 45.4593(a)-1 Exemptions.**

(a) *Shortening or condiments.* Section 4591 shall not apply to puff-pastry

shortening not churned or emulsified in milk or cream, and having a melting point of 118 degrees Fahrenheit or more, nor to any of the following containing condiments and spices: salad dressing, mayonnaise dressing, or mayonnaise products, nor to liquid emulsion, pharmaceutical preparations, oil meals, liquid preservatives, illuminating oils, cleansing compounds, or flavoring compounds.

**Subpart F—White Phosphorus Matches**

**§ 45.4801 Statutory provisions; imposition of tax.**

SEC. 4801. *Imposition of tax—(a) Rate.* There shall be imposed upon white phosphorus matches manufactured, sold, or removed a tax at the rate of 2 cents per one hundred matches.

(b) *By whom paid.* The tax imposed by subsection (a) shall be paid by the manufacturer.

[Sec. 4801 as originally enacted and in effect July 1, 1960]

**§ 45.4801-1 Imposition and rate of tax.**

Section 4801 imposes a tax upon white phosphorus matches manufactured, sold, or removed at the rate of 2 cents per 100 matches. The tax is payable by the manufacturer of the white phosphorus matches. For a definition of the term "white phosphorus", see section 4802 and § 45.4802-1.

**§ 45.4802 Statutory provisions; definition of white phosphorus.**

SEC. 4802. *Definition of white phosphorus.* For the purpose of this subchapter, the words "white phosphorus" shall be understood to mean the common poisonous white or yellow phosphorus used in the manufacture of matches and not to include the nonpoisonous forms or the nonpoisonous compounds of white or yellow phosphorus.

[Sec. 4802 as originally enacted and in effect July 1, 1960]

**§ 45.4802-1 Definition of white phosphorus.**

For the purpose of the regulations in this part, the term "white phosphorus" shall be understood to mean the common poisonous white or yellow phosphorous used in the manufacture of matches. The term does not include the nonpoisonous forms or the nonpoisonous compounds of white or yellow phosphorus.

**§ 45.4803 Statutory provisions; stamps.**

SEC. 4803. *Stamps—(a) Method of payment—(1) Stamps.* The tax imposed by section 4801 shall be represented by adhesive stamps.

(2) *Assessment.* For assessment in case of omitted taxes, see subtitle F.

(b) *Sale.* The Secretary or his delegate shall require that stamps be sold only to duly qualified manufacturers.

(c) *Accounts.* The Secretary or his delegate shall cause to be kept accounts of the number and denominate values of the stamps sold to each manufacturer.

(d) *Other stamp provisions.* All the provisions and penalties of law governing the engraving, issuing, sale, affixing, cancellation, accountability, effacement, destruction, and forgery of stamps provided for internal revenues shall apply to stamps provided for by this subchapter.

[Sec. 4803 as originally enacted and in effect July 1, 1960]

**§ 45.4803-1 Sale of stamps to qualified manufacturer.**

Documentary stamps will be used in the payment of the tax imposed by section 4801. Such stamps are obtainable from any district director upon requisition and payment therefor by a manufacturer who has incurred liability for the tax imposed by section 4801 and who has registered and filed a satisfactory bond in accordance with the regulations in this part.

**§ 45.4804 Statutory provisions; requirements on manufacturers.**

SEC. 4804. *Requirements on manufacturers—(a) Packing—*(1) *Number in packages.* All white phosphorus matches shall be packed by the manufacturer thereof in packages containing 100, 200, 500, 1,000, or 1,500 matches each, which shall then be packed by the manufacturer in packages containing not less than 14,400 matches.

(2) *Stamping.* The manufacturer shall affix to every package containing 100, 200, 500, 1,000, or 1,500 matches an adhesive stamp of the required value and shall place thereon the initials of his name and the date on which such stamp is affixed, so that the same may not again be used.

(3) *Factory number.* Every manufacturer of matches shall mark, brand, affix, stamp, or print, in such manner as the Secretary or his delegate shall prescribe, on every package of white phosphorus matches manufactured, sold, or removed by him, the factory number required under subsection (b).

(4) *Label.* Every manufacturer of white phosphorus matches shall securely affix by pasting on each original package containing stamped packages of white phosphorus matches manufactured by him a label, on which shall be printed, besides the number of the manufactory and the district in which it is situated, these words: "Notice.—The manufacturer of the white phosphorus matches herein contained has complied with all the requirements of law. Every person is cautioned not to use again the stamps on the packages herein contained under the penalty provided by law in such cases."

(b) *Factory number and signs.* Every manufacturer of white phosphorus matches shall put up such signs and affix such number to his factory as the Secretary or his delegate may by regulation require.

(c) *Bonds.* Every manufacturer of white phosphorus matches shall file with the official in charge of the internal revenue district in which his manufactory is located such bonds as the Secretary or his delegate may by regulation require. The bond required of such manufacturer shall be in the penal sum of not less than \$1,000; and the sum of said bond may be increased from time to time and additional sureties required at the discretion of the Secretary or his delegate.

(d) *Registration.* Every manufacturer of white phosphorus matches shall register with the official in charge of the internal revenue district his name or style, place of manufactory, and the place where such business is to be carried on.

[Sec. 4804 as originally enacted and in effect July 1, 1960]

**§ 45.4804-1 Packing and stamping of white phosphorus matches.**

Section 4804(a) requires that all white phosphorus matches shall be packed in packages of 100, 200, 500, 1,000, and 1,500 matches each, and these shall then be packed in packages containing not less than 14,400 matches. The stamp or stamps required to be used in payment of the tax must be securely affixed by the

manufacturer so as to seal the packages of 100, 200, 500, 1,000, and 1,500 matches and the initials of the manufacturer and the date when such stamp or stamps are affixed placed thereon either by stencil or perforation. The stenciling or perforating of stamps may be done before affixing to the packages where machines are employed for this purpose and where the stenciling or perforating of stamps after affixing would injure the packages. Packages for packing 100, 200, 500, 1,000, and 1,500 matches may be of any durable material which will permit the affixing and adhesion of the stamps.

**§ 45.4804-2 Factory number.**

Upon receipt of the notice of intention to manufacture white phosphorus matches, as provided by § 45.4804-8, the district director will assign to the manufacturer a factory number, which applies to the factory, and shall not thereafter be changed. In case there is more than one manufacturer, or a single manufacturer having more than one factory in the same district, a separate and consecutive number shall be given each factory.

**§ 45.4804-3 Manufacturer's sign.**

The manufacturer shall, after assignment of a factory number, place over the principal entrance to the building in which the business is carried on a sign with letters not less than 4 inches in length and of sufficient width, gilded or painted in oil in colors so as to be easily discernible, giving the name and business and number of factory in the following form:

John Doe,

Manufacturer of White Phosphorus Matches,  
Factory No. 1

**§ 45.4804-4 Separate factories for taxable and nontaxable matches.**

If the manufacturer is also engaged in the production of matches not taxable under section 4801, the factory premises where the taxable and nontaxable matches are produced shall be entirely separate, or if in the same building, separated by solid walls or partitions, which shall extend from floor to ceiling. The manufacture of taxable and nontaxable matches on the same premises and with the same machinery is not permissible.

**§ 45.4804-5 Factory number required on each package.**

The factory number required under section 4804 must be printed, branded, or lithographed on every package of white phosphorus matches removed by the manufacturer.

**§ 45.4804-6 Caution label.**

In addition to the factory number required on the stamped packages of white phosphorus matches a caution label, as required by section 4804(a) (4), must be affixed to the original package containing these stamped packages. This label should be printed in black ink on white paper, or, if other colors are used, the printing should be in strongest contrast to the background, so as to be distinct and legible.

**§ 45.4804-7 Manufacturer's bond.**

Every manufacturer of white phosphorus matches shall file such bonds as the district director may require before commencement of business. The penal sum of such bond shall be not less than \$1,000; and the sum of said bonds may be increased from time to time at the discretion of the district director. This bond is a continuing one until replaced by a new instrument. Where there is a discontinuance of operation for a period, a new bond will be required upon resumption of business. For other provisions relating to bonds, see §§ 301.7101 and 301.7101-1 of this chapter (Regulations on Procedure and Administration).

**§ 45.4804-8 Registry by manufacturer.**

Every person proposing to manufacture white phosphorus matches shall, before commencing such manufacture, register by giving written notice of intention to manufacture white phosphorus matches to the district director for the district in which is located the factory, and on July 1 of each year the manufacturer shall give written notice of intent to continue the manufacture of white phosphorus matches. Such manufacturer will also be required to file bond and to comply with all other provisions of the regulations in this part.

**§ 45.4804-9 Inventory to be made at commencement of business, on July 1 of each year, and at the time of closing.**

After registration, filing of notices and bonds, every manufacturer of white phosphorus matches, before commencing business, shall file with the district director for the district in which his factory is located an inventory in letter form appropriately marked "Opening inventory", stating the quantity of each of the different kinds of materials used in the manufacture of white phosphorus matches, the number of packages and quantity of white phosphorus matches, stamped and unstamped, and the value of attached and unattached stamps held or owned in respect of such factory by such manufacturer, on the date of the inventory. An inventory shall thereafter be filed as of the first day of July during continuance of operations, and a similar inventory must be filed upon discontinuance or suspension of the business for a limited period, which should be marked "closing inventory." Such letter must contain a written declaration that the statements made therein are made under the penalties of perjury.

**§ 45.4804-10 Daily records.**

(a) *In general.* Every manufacturer is required to keep a daily record showing the total of each material used each day and the total number of matches produced and the number of stamped packages and original packages in which packed; also the total number of stamped packages and original packages, together with the total number of matches, disposed of each day.

(b) *Names of customers.* The names of customers to whom matches are consigned and the quantities so sold will not be entered in the manufacturers'

daily record and quarterly returns, but the manufacturer shall, upon request of any internal revenue officer, furnish a record of all sales for such period as may be desired.

#### § 45.4804-11 Quarterly return.

Each manufacturer shall render in duplicate to the district director a return in letter form for each calendar quarter, which shall be a summary of the daily record required under provisions of paragraph (a) of § 45.4804-10.

#### § 45.4805 Statutory provisions; importation and exportation.

SEC. 4805. *Importation and exportation*—(a) *Importation*. White phosphorus matches, manufactured wholly or in part in any foreign country, shall not be entitled to entry at any of the ports of the United States, and the importation thereof is prohibited. All matches imported into the United States shall be accompanied by such certificate of official inspection by the government of the country in which such matches were manufactured as shall satisfy the Secretary or his delegate that they are not white phosphorus matches.

(b) *Exportation*. It shall be unlawful to export from the United States any white phosphorus matches.

[Sec. 4805 as originally enacted and in effect July 1, 1960]

#### § 45.4805-1 Importation and exportation of matches.

(a) *White phosphorus matches*—(1) *Importation*. The importation into the United States of white phosphorus matches is prohibited.

(2) *Exportation*. The exportation from the United States of white phosphorus matches is unlawful.

(b) *Matches in general*. For regulations relating to the importation of matches into, or the exportation of matches out of, the United States, see the regulations of the Bureau of Customs, 19 CFR 12.34 and 12.35.

#### § 45.4806 Statutory provisions; cross references.

SEC. 4806. *Cross references*. For penalties and other general and administrative provisions applicable to this subchapter, see subtitle F.

[Sec. 4806 as originally enacted and in effect July 1, 1960]

#### § 45.4806-1 Cross references.

(a) For penalties, see §§ 45.7208, 45.7209, 45.7239, 45.7267, 45.7274, 45.7303, and 45.7328.

(b) For penalties for failure to register as required by § 45.4804-8, see § 45.7272.

(c) For other administrative provisions, see Subpart L.

### Subpart G—Adulterated and Process or Renovated Butter Tax on Products

#### § 45.4811 Statutory provisions; imposition of tax.

SEC. 4811. *Imposition of tax*—(a) *Rate*—(1) *Adulterated butter*. There shall be imposed upon adulterated butter, when manufactured or sold or removed for consumption or use, a tax of 10 cents per pound, and any fractional part of a pound shall be taxed as a pound.

(2) *Process or renovated butter*. There shall be imposed upon process or renovated

butter, when manufactured or sold or removed for consumption or use, a tax of one-fourth of 1 cent per pound, and any fractional part of a pound shall be taxed as a pound.

(b) *By whom paid*. The tax imposed by subsection (a) shall be paid by the manufacturer.

[Sec. 4811 as originally enacted and in effect July 1, 1960]

#### § 45.4811-1 Imposition and rate of tax.

(a) *Adulterated butter*. Section 4811 (a) (1) imposes a tax upon adulterated butter, when manufactured or sold or removed for consumption or use from the place of manufacture, at the rate of 10 cents per pound. A fractional part of a pound is taxed as a pound. (For definition of adulterated butter, see § 45.4826-2.)

(b) *Process or renovated butter*. Section 4811 (a) (2) imposes a tax upon process or renovated butter, when manufactured or sold or removed for consumption or use from the place of manufacture, at the rate of one-fourth of 1 cent per pound. A fractional part of a pound is taxed as a pound. (For definition of process or renovated butter, see § 45.4826-5.)

(c) *Liability for tax*. The taxes imposed under section 4811 shall be paid by the manufacturer of the adulterated butter or the process or renovated butter, as the case may be. For provisions relating to the method of payment of the tax and to bonding requirements, see §§ 45.4813-1 and 45.4814-5, respectively.

#### § 45.4812 Statutory provisions; importation of adulterated butter.

SEC. 4812. *Importation of adulterated butter*. There shall be imposed upon adulterated butter imported from a foreign country, in addition to any import duty imposed on the same, an internal revenue tax of 15 cents per pound, such tax to be represented by coupon stamps as in the case of adulterated butter manufactured in the United States. The stamps shall be affixed and canceled by the owner or importer of the adulterated butter while it is in the custody of the officers or employees designated by the Secretary or his delegate; and the adulterated butter shall not pass out of the custody of said officers or employees until the stamps have been so affixed and canceled, but shall be put up in wooden packages, each containing not less than 10 pounds, as prescribed in this subpart for adulterated butter manufactured in the United States, before the stamps are affixed; and the owner or importer of such adulterated butter shall be liable to all the penal provisions of this subpart prescribed for manufacturers of adulterated butter manufactured in the United States. Whenever it is necessary to take any adulterated butter so imported to any place other than the public stores of the United States for the purpose of affixing and canceling such stamps, the Secretary or his delegate shall designate a bonded warehouse to which it shall be taken, under the control of such officer or employee as the Secretary or his delegate may direct.

[Sec. 4812 as originally enacted and in effect July 1, 1960]

#### § 45.4812-1 Imposition and rate of tax.

(a) *In general*. Section 4812 imposes a tax upon adulterated butter imported from a foreign country at the rate of 15 cents per pound. The tax imposed by

section 4812 is in addition to any import duty imposed upon adulterated butter.

(b) *Liability for tax*. The tax imposed under section 4812 upon imported adulterated butter is payable by the owner or importer of the imported adulterated butter by the affixing of coupon stamps while the adulterated butter is in the custody of the Bureau of Customs.

#### § 45.4812-2 Requisition for, affixing and canceling stamps.

(a) *Requisition for stamps*. Stamps for tax payment of imported adulterated butter will be sold to the owner or importer only upon requisition on Form 923 executed by an authorized customs officer. The requisition shall be presented to the district director for the district in which is located the customhouse where the entry is filed.

(b) *Affixing and canceling stamps*. Before release from customs custody stamps shall be affixed and canceled by the owner or importer in the manner prescribed in paragraphs (c) and (d) of § 45.4813-1, except that the cancellation shall distinctly show the name of the owner or importer, port of entry, customs entry number, and date.

#### § 45.4812-3 Packing and branding.

Imported adulterated butter shall be packed in wooden packages of not less than 10 pounds each, as prescribed in paragraph (a) of § 45.4814-1. Before removal from customs custody imported packages shall be branded in accordance with paragraph (b) of § 45.4814-1, so far as applicable, the name of the country of origin, and the name and address of the imported to be substituted for the factory number, and internal revenue district and State. The caution notice prescribed in § 45.4814-3 for packages of adulterated butter of domestic manufacture is not required in the case of imported adulterated butter.

#### § 45.4813 Statutory provisions; stamps.

SEC. 4813. *Stamps*—(a) *Method of payment*—(1) *Stamps*. The tax imposed by section 4811 shall be represented by coupon stamps.

(2) *Assessment*. For assessment in case of omitted taxes, see subtitle F.

(b) *Emptied packages*. Whenever any stamped package containing adulterated butter is emptied, it shall be the duty of the person in whose hands the same is to destroy utterly the stamps thereon. The Secretary or his delegate may destroy any emptied package of adulterated butter upon which the tax-paid stamp is found.

(c) *Other stamp provisions*. The provisions of law governing the engraving, issuing, sale, accountability, effacement, and destruction of stamps relating to tobacco and snuff, as far as applicable, shall apply to the stamps provided in paragraph (1) of subsection (a).

[Sec. 4813 as originally enacted and in effect July 1, 1960]

#### § 45.4813-1 Method of payment.

(a) *Stamps*—(1) *In general*. The taxes imposed under section 4811 shall be paid by the manufacturer by affixing stamps to the packages of adulterated butter or process or renovated butter, as the case may be, before the packages are removed from the bonded premises. If, however, the district di-

rector deems it necessary, he may require the attachment of stamps at any time after manufacture.

(2) *Denomination of stamps.* Stamps for the payment of the tax on adulterated butter, or process or renovated butter are designated "Process or Renovated Butter" and are issued in sheets of 20 stamps each, in denominations of 10, 20, 30, 40, 50, 60, and 100 pounds. One-pound coupon stamps for use in connection with stamps of the foregoing denominations are issued in sheets of 200 stamps each.

(b) *Ordering stamps.* Except as otherwise provided in § 45.4812-2, stamps for packages of adulterated butter or process or renovated butter will be sold only to registered manufacturers. They shall be purchased from the district director for the district in which the factory is located. Orders for stamps shall be prepared on Form 218. A remittance for the total value of the stamps shall accompany the order.

(c) *Affixing stamps.* An internal-revenue stamp of a denomination that will fully cover the tax on the net weight of the contents shall be affixed to each package before removal from the factory, except packages for export and for use of the United States. A single stamp of a denomination denoting the quantity in the package shall be used if stamps of such denomination are issued. If a single stamp will not fully cover the tax due, the least sufficient number of additional stamps shall be used.

(d) *Canceling stamps.* Each stamp affixed to a package shall be canceled before removal from the factory. The cancellation shall be legibly written or printed in ink, or perforated, and shall show the factory number, internal revenue district, State, and date. The cancellation marks may be abbreviated in the following manner, indicating, for example, cancellation by factory No. 10, Chicago district, Illinois, on January 15, 1958: 10-Chicago, Ill., 1-15-58.

#### § 45.4814 Statutory provisions; requirements applicable to manufacturers.

Sec. 4814. *Requirements applicable to manufacturers—(a) Packing, stamping, and selling requirements—(1) Adulterated butter.* All adulterated butter shall be packed by the manufacturer thereof in firkins, tubs, or other wooden, tin-plate, or paper packages not before used for that purpose, containing, or encased in a manufacturer's package made from any of such materials of, not less than ten pounds, and marked, stamped, and branded as the Secretary or his delegate shall prescribe, and all sales made by manufacturers of adulterated butter shall be in original, stamped packages. Every manufacturer of adulterated butter shall securely affix, by pasting, on each package containing adulterated butter manufactured by him a label on which shall be printed, besides the number of the manufacturer and the district and State in which it is situated, these words: "Notice.—The manufacturer of the adulterated butter herein contained has complied with all the requirements of law. Every person is cautioned not to use either this package again or the stamp thereon, nor to remove the contents of this package without destroying said stamp, under the penalty provided by law in such cases."

(2) *Process or renovated butter.* For marking process or renovated butter, see section 4817.

(b) *Factory number and signs.* Every manufacturer of process or renovated butter or adulterated butter shall put up such signs and affix such number to his factory as the Secretary or his delegate may by regulation require.

(c) *Bonds.* Every manufacturer of process or renovated butter or adulterated butter shall file with the official in charge of the internal revenue district in which his manufactory is located such bonds as the Secretary or his delegate may by regulation require. The bond required of such manufacturer shall be in a penal sum of not less \$500; and the sum of said bond may be increased from time to time and additional sureties required at the discretion of the Secretary or his delegate.

[Sec. 4814 as originally enacted and in effect July 1, 1960]

#### § 45.4814-1 Packing and branding adulterated butter.

(a) *Packages—(1) General.* (i) Adulterated butter shall be packed by the manufacturer thereof in statutory packages of not less than 10 pounds. A statutory package is one designed to contain only that quantity of adulterated butter as indicated by the stamp or stamps to be affixed thereto.

(ii) Containers of adulterated butter must be of a durable and substantial character and must completely cover the contents. As to penalty for refilling containers from which adulterated butter has been removed, see section 7234(d) (2) (B).

(2) *Additional coverings.* Properly stamped and branded packages of adulterated butter may be incased in additional coverings or wrappers provided such coverings are branded as prescribed in paragraph (b) of this section and contain the following inscription legibly printed or stenciled in letters not less than half an inch high: "Tax has been paid and proper stamp placed on the original package contained herein."

(3) *Prints and rolls.* Manufacturers may subdivide a statutory package of adulterated butter into prints or rolls, provided such subdivisions do not constitute original or statutory packages within the meaning of the law, or weigh less than one-quarter of a pound. Prints and rolls shall be placed in cartons or wrappers branded as prescribed in paragraph (b) of this section.

(b) *Branding—(1) Statutory packages.* (i) Before removal from the factory the words "Adulterated Butter," the factory number, the internal revenue district, State, and the gross, tare, and net weights shall be legibly printed or stenciled on one of the sides or top of each package of adulterated butter in the manner shown in the following example:

ADULTERATED BUTTER  
Factory No. 2, Manhattan Dist. N.Y.  
64-4-60.

(ii) The words "Adulterated Butter" shall be in boldface gothic letters not less than three-quarters of an inch high, and the other letters and figures not less than one-half inch high. The color of the brand shall be in strong contrast to that of the package.

(2) *Cartons.* The words "Adulterated Butter", the net weight of contents, and the manufacturer's name and ad-

dress, or the internal-revenue factory number, internal revenue district, and State shall be branded on cartons. The words "Adulterated Butter" shall be in plain gothic letters of not less than 20-point type, shall measure not less than 3½ inches in length, and be of a color in strong contrast to that of the carton. Hair-line, shaded or ornate letters, or letters in outline may not be used.

(4) *Wrappers—(i) Inside wrappers.* The manufacturer's name and address and the factory number, internal revenue district, and State may be omitted from cartons if printed on wrappers used with cartons. When a manufacturer operates more than one factory he may brand cartons with the name and address of his general office, or the address of each factory, provided an inside wrapper is used showing either the name and address of the factory where the adulterated butter was produced, or the factory number, the internal revenue district, and State.

(ii) *Blank wrappers.* Blank wrappers may be used with properly branded cartons.

(iii) *Wrappers without cartons.* When used without cartons, wrappers shall be branded in the same manner as cartons. The words "Adulterated Butter" shall be so placed on the wrapper that they will appear at the top and bottom of the print or roll when wrapped.

(5) *Dealer's name on containers.* When a dealer's name is printed on containers a phrase such as "prepared for," "distributed by," etc., shall be placed before his name to show that the dealer is not the manufacturer.

#### § 45.4814-2 Marking process or renovated butter.

For provisions with respect to the inspection and marking of process or renovated butter, see § 45.4817-1.

#### § 45.4814-3 Caution notice; placement upon packages.

(a) *Adulterated butter.* Before removal from the factory each statutory package of adulterated butter must have conspicuously printed or labeled on it the following notice, which must measure not less than 3 inches long by 1½ inches wide:

Factory No. ----- District, State  
of -----

NOTICE: The manufacturer of the adulterated butter herein contained has complied with all the requirements of law. Every person is cautioned not to use either this package again (for adulterated butter) or the stamp thereon again, nor to remove the contents of this package without destroying said stamp, under the penalty provided by law in such cases.

(b) *Process or renovated butter.* A similar caution notice with appropriate changes in wording is required in the case of process or renovated butter.

#### § 45.4814-4 Factories.

(a) *Premises.* Unless otherwise approved by the district director, another factory may not be operated at the same time within the premises described in a manufacturer's notice. (See paragraph (d) of this section.)

(b) *Signs.* Over the principal entrance to each building in which process or renovated butter, or adulterated butter is produced the manufacturer shall conspicuously display a sign showing the name in which the business is conducted, the kind of business, and the internal-revenue factory number, in durable characters not less than 3 inches high.

(c) *Numbers.* Each factory producing process or renovated butter or adulterated butter shall be numbered by the district director of the district in which the plant is located. The number assigned to one factory shall not be used by another factory in the same district, or changed without the approval of the district director. If the factory is moved to another part of the district the number shall be retained. If moved to another district a new number will be assigned to the factory by the district director of the district to which the factory is moved. If the business is discontinued the number will not be assigned to another factory during the balance of the fiscal year.

(d) *Manufacturer's notice.*—(1) *Execution of form.* Before commencing business, and immediately on the first day of July thereafter as long as he continues in the business, a manufacturer of adulterated butter or process or renovated butter shall file with the district director a notice of intention to manufacture. This notice shall be prepared on Form 213 which may be obtained from the district director. The premises described in the notice shall conform with the requirements of this section.

(2) *Notice of change.* A new notice shall be filed with the district director before or immediately upon making any change either in location or in the premises or ownership of the business as described in the original notice.

#### § 45.4814-5 Bonding.

(a) *Requirement.* Every manufacturer of process or renovated butter or adulterated butter before incurring any liability for the tax imposed by section 4811, shall file a bond with the district director in accordance with the provisions of paragraph (b) of this section.

(b) *Bond.*—(1) *In general.* The bond required under paragraph (a) of this section shall be executed in accordance with the form, instructions, and regulations applicable thereto. Such bond shall be conditioned that the principal shall not engage in any attempt, by himself or by collusion with others, to defraud the United States of any tax under section 4811; that he shall render truly and completely all the returns and inventories required by law or regulations in respect of such tax and shall pay all such taxes for which he is liable; and that he shall comply with all requirements of law and regulations with respect to such taxes. The penal sum of such bond shall be not less than \$500; and the sum of said bond may be increased from time to time at the discretion of the district director. Copies of the form to be used in filing the bond may be obtained from any district director.

(2) *Cancellation clause.* The bond required under paragraph (a) of this section may be accepted with a cancellation clause incorporated therein. Such cancellation clause shall provide that:

(i) Any surety on the bond may at any time give notice to the principal and the district director that he desires to be relieved of liability under said bond after a date named, which shall be at least 60 days after the receipt of notice by the district director.

(ii) If the notice is not withdrawn in writing prior to the date named in the notice, the rights of the principal as supported by said bond shall be terminated on such date (unless supported by another bond or bonds), and the surety shall be relieved from liability under said bond for any acts done wholly subsequent to said date. The surety shall, however, remain liable for any unpaid tax liability incurred by the principal before cancellation, in addition to penalties and interest, unless the principal pays such tax and penalties and interest.

(iii) Said notice may not be given by an agent of the surety, unless it is accompanied by power of attorney duly executed by the surety authorizing the agent to give such notice or by a verified statement that such power of attorney is on file with the Treasury Department.

(3) *New or additional bond.* The district director may require a new or additional bond under this section in any case where he deems it necessary or desirable in order to protect the interest of the United States.

(4) *Other provisions relating to bonds.* For general provisions relating to bonds, including such matters as the surety or sureties required, see §§ 301.7101 and 301.7101-1 of this chapter (Regulations on Procedure and Administration).

#### § 45.4815(a) Statutory provisions; requirements applicable to dealers; selling requirements.

SEC. 4815. *Requirements applicable to dealers.*—(a) *Selling requirements.* Dealers in adulterated butter must sell only original or from original stamped packages, and when such original stamped packages are broken the adulterated butter sold from same shall be placed in suitable wooden, tin-plate, or paper packages, which shall be marked and branded as the Secretary or his delegates shall prescribe.

[Sec. 4815(a) as originally enacted and in effect July 1, 1960]

#### § 45.4815(a)-1 Selling and buying requirements applicable to adulterated butter.

(a) *Factory-branded packages.* Except as may otherwise be required by State law or local regulation, adulterated butter packed by the manufacturer in cartons or wrappers, branded as prescribed in § 45.4814-1(b), may be sold by a retail dealer from the original stamped container without further branding.

(b) *Branding upon sale.* (1) If the manufacturer's package is not subdivided into prints or rolls the retail dealer shall wrap the adulterated butter at the time of sale in a new covering, which shall be branded with his name and address, the words "Adulterated Butter",

and the net weight of the contents. Example:

RICHARD ROE  
100 Doe Street, Boston  
1 pound adulterated butter

(2) The letters shall be not less than one-quarter of an inch square and printed in an ink which forms a strong contrast with the color of the covering. Other marks which would obscure the brand shall not be made. The covering shall be so placed around the adulterated butter that the brand will be plainly visible.

(c) *Misbranded packages.* A retail dealer shall see that cartons and wrappers are branded as prescribed in § 45.4814-1(b), as penalty provided in section 7235(a) is incurred if he sells an improperly branded package of adulterated butter. It will be no defense for a retail dealer to show, in an action for failure to properly brand, that the product was sold in cartons or wrappers as packed by the manufacturer. Penalty for buying improperly branded packages is provided by section 7265(b).

(d) *Removal from package.* A retail dealer may not lawfully remove adulterated butter from the original stamped packages either for repacking, cutting into prints or rolls, or other purposes, nor remove the sides or ends of such packages, before disposal of the contents.

(e) *Displaying packages.* The top of a manufacturer's package may be removed or folded back to display the contents, provided the package is so placed that the words "Adulterated Butter" will be plainly visible and not obscured or rendered inconspicuous. (See § 45.4814-1(b).)

(f) *Ordering.* (1) When ordering or purchasing adulterated butter a dealer shall state his name and address as they appear on his special-tax stamp. If a trade name, as well as the proprietor's real name, appears on the special-tax stamp, both shall be stated on the order. Adulterated butter shall not be ordered in a trade name that is not registered with the district director and stated on the dealer's special-tax stamp.

(2) If the premises have two addresses, because fronting on two streets or for other reasons, the address registered with the district director shall always be used. If adulterated butter is ordered for shipment to a point other than the dealer's registered address, the registered address, as well as the shipping point, shall be named in the order.

#### § 45.4815(b) Statutory provisions; requirements applicable to dealers; books of wholesale dealers.

SEC. 4815. *Requirements applicable to dealers.* \* \* \*

(b) *Books of wholesale dealers.* Books required by section 6001 to be kept by wholesale dealers in process, renovated, or adulterated butter shall be open at all times to the inspection of any officer or employee designated by the Secretary or his delegate.

[Sec. 4815(b) as originally enacted and in effect July 1, 1960]

#### § 45.4816 Statutory provisions; exportation of adulterated butter.

SEC. 4816. *Exportation of adulterated butter.* Adulterated butter may be removed

from the place of manufacture for export to a foreign country without payment of tax or affixing stamps thereto, under such regulations and the filing of such bonds and other security as the Secretary or his delegate may prescribe. Every person who shall export adulterated butter shall brand upon every tub, firkin, or other package containing such article the words "Adulterated Butter", in plain Roman letters not less than one-half inch square.

[Sec. 4816 as originally enacted and in effect July 1, 1960]

**§ 45.4816-1 Exemption in case of exportation of adulterated butter.**

(a) *In general.* The tax imposed by section 4811(a) shall not apply in the case of the removal from the place of manufacture of adulterated butter for the purpose of exportation to a foreign country.

(b) *Requirements.*—(1) *Packing and marking.* Every firkin, tub, or other package containing adulterated butter to be exported without payment of tax, must, before removal from the factory, be branded with the words "Adulterated Butter" in plain Roman letters not less than one-half inch square.

(2) *Exception.* When manufactured expressly for export in accordance with specifications of foreign customers, a product coming within the classification of adulterated butter, as defined in section 4826(b), may be branded "Preserved Butter" in lieu of "Adulterated Butter", provided such labeling does not violate the laws of the country to which the product is exported, or the Federal Food, Drug, and Cosmetic Act (52 Stat. 1040; 21 U.S.C. chapter 9), or any other act, or regulations issued under authority thereof.

(c) *Consumption aboard vessel.* Adulterated butter for consumption aboard a vessel while in a port of the United States or en route to a foreign country shall be tax-paid.

(d) *Cross reference.* For all other requirements with respect to the exportation of adulterated butter without the payment of tax see §§ 45.4453-1 and 45.4453-2 with respect to the exportation of playing cards which so far as applicable, are hereby extended and made to apply to the exportation of adulterated butter.

(e) *No exemption in case of process or renovated butter.* Part I of subchapter C, chapter 39, makes no provision for the exportation of process or renovated butter free of tax.

**§ 45.4817 Statutory provisions; inspection of process or renovated butter.**

Sec. 4817. *Inspection of process or renovated butter.* For the purpose of protecting interstate and foreign commerce from process or renovated butter which is unclean, unwholesome, unhealthful, or otherwise unfit for human food—

(1) *Ingredients.* The Secretary of Agriculture shall, through inspectors appointed by him, cause inspections to be made of all milk, butter, butter oil, and other ingredients intended for use in the manufacture of process or renovated butter. All ingredients which are found to be putrid or decomposed or which contain organic or inorganic substances which are foreign to such ingredients when properly made, manufactured, produced, collected, stored, transported, or han-

dled, and which organic or inorganic substances cannot be removed by processing, shall be deemed unfit for use in the manufacture of process or renovated butter, shall be marked "U.S. Inspected and Condemned", and shall be denatured or destroyed under the supervision of the inspector. All other ingredients shall be marked "U.S. Inspected and Passed", and shall be deemed fit for use in the manufacture of process or renovated butter.

(2) *Finished product.* The Secretary of Agriculture shall cause inspections to be made of all process or renovated butter. If such butter is found to be clean, wholesome, healthful, and otherwise fit for human food, it shall be marked "U.S. Inspected and Passed". Process or renovated butter that is found to be unclean, unwholesome, unhealthful, or otherwise unfit for human food shall be denatured or destroyed under the supervision of the inspector.

(3) *Factories.* The Secretary of Agriculture shall cause inspections to be made of all factories wherein process or renovated butter is manufactured to determine the sanitary conditions thereof, and if it is found that the conditions existing in any such factory do not meet the standards prescribed by the Secretary in his regulations, he shall cause inspection to be withdrawn therefrom.

(4) *Compliance by manufacturer.* The Secretary of Agriculture is authorized to withdraw inspection from any factory wherein process or renovated butter is made, if the manufacturer shall fail to comply with any of the provisions of this section or with any of the rules and regulations prescribed hereunder.

(5) *Rules and regulations.* The Secretary of Agriculture is authorized to make such rules and regulations as he deems necessary for the efficient administration of the provisions of this section, and all inspections hereunder shall be made in such manner as may be prescribed in such regulations. The Secretary of Agriculture may, from time to time, by regulations define the foreign substances and the extent thereof that render the ingredients unfit for use in manufacturing process or renovated butter.

(6) *Statistics.* The Secretary of Agriculture shall cause to be ascertained, and he shall report, from time to time, the quantity and quality of all process or renovated butter manufactured and the character and condition of the materials from which it is made.

(7) *Forgery, etc., of stamps, etc.* No person, firm, or corporation shall forge, counterfeit, simulate, falsely represent, detach, or, knowingly alter, deface, or destroy, or use without proper authority any of the marks, stamps, labels, or tabs provided for in this section or in any regulations prescribed hereunder by the Secretary of Agriculture for use on process or renovated butter or on wrappers, packages, containers, or cases in which the product is contained, or any certificate in relation thereto.

(8) *Labels on containers.* All process or renovated butter and the packages or containers thereof shall be marked with the words "Process Butter" and by such other marks, labels, or brands, and in such manner, as may be prescribed by the Secretary of Agriculture.

(9) *False or misleading labels.* No statement that is false or misleading in any particular shall be placed on or affixed to any wrapper, label, carton, or container of process or renovated butter.

(10) *Unapproved product in interstate or foreign commerce.* No person, firm or corporation shall transport, or offer for transportation, or sell or offer for sale, in interstate or foreign commerce, or in commerce affecting commerce among the States, any process or renovated butter that has not been inspected and passed and marked,

labeled, and branded in accordance with this section and the regulations issued hereunder.

(11) *Administration.* The administration and enforcement of the provisions of this section, other than its provisions relating to revenue, but including the seizure and denaturing or destruction of ingredients intended to be used in the manufacture of process or renovated butter and the denaturing or destruction of process or renovated butter, are committed exclusively to the Secretary of Agriculture: *Provided*, That any powers and duties of the Food and Drug Administration of the Department of Health, Education, and Welfare under the Federal Food, Drug, and Cosmetic Act, as amended (52 Stat. 1040; 21 U.S.C., chapter 9), as regards such ingredients before they come into the possession of the manufacturers of process or renovated butter, or as regards such powers and duties in connection with process or renovated butter after it leaves such manufacturers and comes into the hands of wholesale or retail dealers, or others, shall not be affected by this section.

[Sec. 4817 as originally enacted and in effect July 1, 1960]

**§ 45.4817-1 Inspection of process or renovated butter.**

For regulations issued under section 4817 by the Secretary of Agriculture relating to process or renovated butter, see 9 CFR Part 171.

**§ 45.4818 Statutory provisions; administrative decisions relating to adulterated butter.**

Sec. 4818. *Administrative decisions relating to adulterated butter.* The Secretary or his delegate is authorized to decide what substances, extracts, mixtures, or compounds which may be submitted for his inspection in contested cases are to be taxed as adulterated butter under this subpart; and his decision in such matters of taxation under this subpart shall be final.

[Sec. 4818 as amended and in effect July 1, 1960]

**§ 45.4818-1 Administrative decisions relating to adulterated butter.**

The Commissioner is authorized to decide what substances, extracts, mixtures, or compounds which may be submitted for his inspection in contested cases are to be taxed as adulterated butter; and his decision in such matters of taxation shall be final.

**§ 45.4819 Statutory provisions; cross references.**

Sec. 4819. *Cross references.*—(a) *Definitions.* For definitions applicable to this subpart, see section 4826.

(b) *Other provisions.* For penalties and other general and administrative provisions applicable to this subpart see subtitle F.

[Sec. 4819 as originally enacted and in effect July 1, 1960]

**§ 45.4819-1 Cross references.**

(a) For definitions relating to adulterated butter and process or renovated butter, see section 4826 and the regulations thereunder.

(b) For penalties for offenses relating to stamps, see § 45.7209.

(c) For penalty for unauthorized use or sale of stamps, see § 45.7208.

(d) For penalties for other offenses relating to stamps, see § 45.7271.

(e) For penalty for failure to register, see § 45.7272.

(f) For other administrative provisions relating to the tax imposed on adulterated butter, see subpart L.

#### OCCUPATIONAL TAX

#### § 45.4821 Statutory provisions; imposition of tax.

**Sec. 4821. Imposition of tax.**—(a) *Manufacturers*—(1) *Process or renovated butter.* Manufacturers of process or renovated butter shall pay a special tax of \$50 a year.

(2) *Adulterated butter.* Manufacturers of adulterated butter shall pay a special tax of \$600 a year.

(b) *Wholesale dealers in adulterated butter.* Wholesale dealers in adulterated butter shall pay a special tax of \$480 a year.

(c) *Retail dealers in adulterated butter.* Retail dealers in adulterated butter shall pay a special tax of \$48 a year.

[Sec. 4821 as originally enacted and in effect July 1, 1960]

#### § 45.4821-1 Imposition and rate of tax.

(a) *Manufacturers*—(1) *Process or renovated butter.* Section 4821(a)(1) imposes a special tax in the case of manufacturers of process or renovated butter of \$50 per year.

(2) *Adulterated butter.* Section 4821(a)(2) imposes a special tax in the case of manufacturers of adulterated butter of \$600 per year.

(b) *Wholesale dealers.* Section 4821(b) imposes a special tax in the case of wholesale dealers in adulterated butter of \$480 per year.

(c) *Retail dealers.* Section 4821(c) imposes a special tax in the case of retail dealers in adulterated butter of \$48 per year.

(d) *Computation of the tax.* For regulations relating to computation of the tax, see paragraph (b) of § 45.4901-1.

#### § 45.4821-2 Requirements with respect to manufacturers of adulterated butter or process or renovated butter.

(a) *Payment of special tax.* A manufacturer of adulterated butter or process or renovated butter must make a return on Form 11 to the district director, pay the special tax, and comply with the provisions contained in subpart K, relating to special taxes.

(b) *Liability as a wholesale dealer.* If a manufacturer of adulterated butter sells statutory packages of his own production elsewhere than at the place of manufacture, liability as a wholesale dealer is incurred. (See paragraph (c) (1) of § 45.4821-3.) As to exemption from liability as a wholesale dealer, see §§ 45.4821-4 and 45.4903-1.

(c) *Liability as a retail dealer.* A manufacturer shall sell adulterated butter in statutory packages only. (See paragraph (b)(1) of § 45.4814-2.) A manufacturer who sells adulterated butter otherwise than in statutory packages incurs liability to the \$1,000 penalty imposed by section 7265(c). If the quantity sold is less than 10 pounds, liability as a retail dealer is also incurred.

(d) *Cross reference.* For the general requirements with respect to manufacturers of adulterated butter or process or renovated butter, see §§ 45.4814-1 to 45.4814-5.

#### § 45.4821-3 Requirements with respect to wholesale dealers in adulterated butter.

(a) *Payment of special tax.* A wholesale dealer in adulterated butter shall make a return on Form 11 to the district director, pay the special tax, and comply with the provisions contained in Subpart K, relating to special taxes.

(b) *Liability for breaking package.* A wholesale dealer in adulterated butter shall sell original stamped packages only. A wholesale dealer who removes and sells adulterated butter from original stamped packages incurs liability to the \$1,000 penalty imposed by section 7265(c). If the quantity sold is less than 10 pounds, liability as a retail dealer is also incurred.

(c) *Liability in particular situations.*

(1) *Place of sale.* Liability to special tax as either a wholesale dealer or a retail dealer is incurred at each place other than the registered premises where adulterated butter is sold or offered for sale. The place of actual or constructive delivery transferring the ownership of the adulterated butter from the vendor to the vendee is regarded as the place of sale for which special tax is required to be paid. (See paragraph (b) of § 45.4821-6 as to itinerant vendors.)

(2) *Delivery orders.* Sales to persons ordering adulterated butter, including c.o.d. orders, shall be absolutely completed at the registered place of business of the vendor or liability is incurred at each place where deliveries are made. Orders must be received at the vendor's registered premises, where the adulterated butter must be addressed and billed to, and the sales recorded in the names of the persons ordering. The identical package sold at the vendor's registered place of business to the person ordering is the only package the vendor or his agent may deliver at another place without incurring liability for the special tax at the place of delivery.

(3) *Sight draft orders.* Where a bona fide order is received at the registered place of business of the vendor and the adulterated butter is there addressed and billed to the persons ordering, it may be shipped with a draft for the purchase money attached to the bill of lading. The bill of lading shall be endorsed specifically, and not in blank, to the person ordering, and the draft drawn on such person, otherwise the sale is completed and special-tax liability is incurred at the place of delivery.

(4) *Standing orders.* Deliveries of adulterated butter may be made as specified in a standing order accepted at the registered place of business of a manufacturer or dealer without incurring special tax liability at the place of delivery. However, delivery of any other quantity than that specified in the standing order, whether more or less, constitutes a separate transaction not covered by the standing order, and is subject to subparagraph (2) of this paragraph.

(5) *Agents or brokers.* A broker or agent may solicit orders for adulterated butter, receive a commission for his services, and make collections for the principal without becoming liable to special

tax as a dealer, provided title to the adulterated butter does not vest in the agent or broker at any time. If the manufacturer or dealer bills the adulterated butter to the broker or agent, who in turn bills it to others, with or without profit, a second sale takes place and the broker or agent incurs special-tax liability as a dealer at each place where he makes deliveries.

(6) *Resales.* Before resale of original stamped packages of adulterated butter they shall be actually or constructively returned to the vendor's registered place of business and the second sale there consummated before delivery. If the goods are picked up at the address of one customer and delivered to that of another before the resale is completed at the vendor's registered place of business, the resale occurs at the place of delivery and additional special tax liability is incurred.

(7) *Delivery from warehouse.* Tax-paid packages of adulterated butter may be stored in warehouses and delivered therefrom without incurring special-tax liability at the warehouse: *Provided*, The sales are completed at the vendor's registered place of business. The mere transmittal to, and the filling of the order at, the warehouse do not constitute a sale at the registered place of business. The adulterated butter must be billed to, and the sale recorded in the name of, the customer at the registered place of business before the removal from the warehouse.

(8) *Chain store warehouses.* An operator of chain stores may store adulterated butter in warehouses operated by him, without incurring special-tax liability at the warehouses, provided no sales are made there and that the adulterated butter is distributed exclusively to stores operated by him, and not to stores of other operators.

(9) *Exporters.* A person otherwise liable as a wholesale dealer for the special tax is not exempt because transactions are for export only.

#### § 45.4821-4 Exemptions as wholesale dealer.

Liability for the special tax as a wholesale dealer is not incurred in the following situations:

(a) *Sales at factory.* Where a manufacturer sells adulterated butter of his own production in statutory packages at the place of manufacture. As to manufacturer's liability as a retail dealer, see paragraph (c) of § 45.4821-2.

(b) *Sales of left-over stock.* Where a manufacturer who, having discontinued the business, directs a wholesale dealer holding adulterated butter of his production to consign it to another wholesale dealer for sale on commission for the manufacturer's account.

(c) *Sales to secure charges.* Where a warehouse sells adulterated butter to cover storage charges, or a transportation company to secure freight charges or salvage damaged merchandise. The quantity so sold and the name and address of the buyer shall be reported to the district director.

(d) *Sales to assignee.* Where a retail dealer sells his stock of merchandise, including adulterated butter, to his successor.

**§ 45.4821-5 Requirements with respect to retail dealers in adulterated butter.**

(a) *Payment of special tax.* A retail dealer shall make return on Form 11 to the district director, pay special tax, and comply with the provisions contained in subpart K, relating to special taxes.

(b) *Quantity limitation.* A retail dealer may sell adulterated butter in quantities of less than 10 pounds at one time taken from an original package or packages, but if he sells an original package of 10 pounds, he will incur liability for the special tax as a wholesale dealer, and for the penalty imposed by section 7265(c) for failure to pay the special tax imposed by section 4821(b).

**§ 45.4821-6 Liability in particular situations.**

(a) *Dealers in other products.* Dealers in butter and other persons who, knowingly or unknowingly, sell adulterated butter render themselves liable to tax as dealers in adulterated butter.

(b) *Itinerant vendors.* A special-tax stamp can be issued only for a specific address or a fixed place of business. Peddlers, operators of so-called rolling stores, and other vendors who, traveling from place to place, sell adulterated butter incur liability to special tax as either a wholesale or retail dealer at each place where sales are made. (See paragraph (c) (1) of § 45.4821-3 as to incurring liability at place of sale.)

(c) *Nontaxable situations.* Special-tax liability as a dealer is not incurred in the following situations:

(1) *Eating places.* Where proprietors of public eating places serve adulterated butter with meals, with or without special charge for it.

(2) *Pooling funds.* Where a member of a pool formed for the purpose of purchasing adulterated butter remits the purchase money and individual orders to the vendor and distributes the goods to other members of the pool. (See paragraph (c) (5) of § 45.4821-3 as to agents or brokers.)

**§ 45.4822 Statutory provisions; cross references.**

Sec. 4822. *Cross references.*—(a) *Definitions.* For definitions applicable to this subpart, see section 4826.

(b) *Other provisions.* For penalties and other general and administrative provisions applicable to this subpart, see chapter 40 and subtitle F.

[Sec. 4822 as originally enacted and in effect July 1, 1960]

**§ 45.4822-1 Cross references.**

(a) For provisions relating to registration in case of a trade or business on which a special tax is imposed, see §§ 45.7011 and 45.7011-1.

(b) For requirements relating to posting occupational tax stamps, see §§ 45.6806 and 45.6806(a)-1.

(c) For other administrative requirements relating to occupational taxes, see Subpart K of this part.

(d) For penalties, see sections 7264, 7265, 7272, and 7273.

**§ 45.4826 Statutory provisions; definitions.**

Sec. 4826. *Definitions.*—(a) *Butter.* For the purpose of this part, the word "butter" shall be understood to mean the food product unusually known as butter, and made exclusively from milk or cream, or both, with or without common salt, and with or without additional coloring matter.

(b) *Adulterated butter.* "Adulterated butter" is defined to mean a grade of butter produced by mixing, reworking, rechurning in milk or cream, refining, or in any way producing a uniform, purified, or improved product from different lots or parcels of melted or unmelted butter or butter fat, in which any acid, alkali, chemical, or any substance whatever is introduced or used for the purpose or with the effect of deodorizing or removing therefrom rancidity, or any butter or butter fat with which there is mixed any substance foreign to butter as defined in subsection (a), with intent or effect of cheapening in cost the product, or any butter in the manufacture or manipulation of which any process or material is used with intent or effect of causing the absorption of abnormal quantities of water, milk or cream.

(c) *Process or renovated butter.* "Process butter" or "renovated butter" is defined to mean butter which has been subjected to any process by which it is melted, clarified, or refined and made to resemble genuine butter, always excepting "adulterated butter" as defined by subsection (b).

(d) *Manufacturer.* Every person who engages in the production of process or renovated butter or adulterated butter as a business shall be considered to be a manufacturer thereof.

(e) *Dealer.* Every person who sells adulterated butter shall be regarded as a dealer in adulterated butter.

(f) *Retail dealer.* Every person who sells adulterated butter in less quantities than 10 pounds at one time shall be regarded as a retail dealer in adulterated butter.

[Sec. 4826 as originally enacted and in effect July 1, 1960]

**§ 45.4826-1 Butter defined.**

Butter churned and worked in accordance with approved standards, and with quality as a prime object, contains not more than 16 percent moisture. As defined by the Federal Food, Drug, and Cosmetic Act of June 25, 1938 (52 Stat. 1040; 21 U.S.C. ch. 9), butter contains not less than 80 percent, by weight, of milk fat, allowance being made for all tolerances. When butter contains a smaller quantity of milk fat or more than 16 percent moisture, a strong presumption is raised that the product is adulterated butter within the meaning of the statute.

**§ 45.4826-2 Adulterated butter classified.**

Adulterated butter may be divided into three classes, namely:

(a) Butter in any way produced from different lots of melted or unmelted butter, or butter fat, to which a substance has been added for the purpose of removing rancidity or deodorizing it, except butter made from sour cream the acid of which has been reduced with lime water before churning.

(b) Butter or butter fat with which is mixed any substance foreign to butter as defined by law, for the purpose of reducing the cost of the product. This

does not include mixtures properly classifiable as oleomargarine.

(c) Butter manufactured or manipulated by any process or with any material resulting in the absorption of abnormal quantities of water, milk, or cream. Emulsified or milk-blended butter comes within this class.

**§ 45.4826-3 Preservatives.**

Butter to which a harmless preservative has been added solely for the purpose of preservation is not subject to tax as adulterated butter, provided the quantity is not larger than is absolutely necessary to preserve it. If the preservative is used as a bath or wash in working or renovating it, the product will be subject to tax as adulterated butter.

**§ 45.4826-4 Ladled butter.**

The product commonly known as "ladled butter" is taxable as adulterated butter if a process within the definition of adulterated butter (see § 45.4826-2) is used.

**§ 45.4826-5 Process or renovated butter.**

The terms "process butter" and "renovated butter" are used synonymously in the regulations in this part and it is immaterial, for purposes of this part, whether a manufacturer designates the product "process butter" or "renovated butter". Butter which falls within the definition of adulterated butter (see § 45.4826-2) is subject to tax as adulterated butter rather than as process or renovated butter. The principal difference between adulterated butter and process or renovated butter is with respect to the use of chemicals or other substances. Butter reworked with the use of chemicals or other substances is adulterated. Butter which is melted, clarified, or refined without the use of chemicals or other substances is process or renovated butter.

**Subpart H—Filled Cheese Tax on Products**

**§ 45.4831 Statutory provisions; imposition of tax.**

Sec. 4831. *Imposition of tax.*—(a) *Domestic.* There shall be imposed upon all filled cheese which shall be manufactured a tax of 1 cent per pound payable by the manufacturer thereof; and any fractional part of a pound in a package shall be taxed as a pound.

(b) *Imported.* There shall be imposed upon all filled cheese imported from a foreign country, in addition to any import duty imposed on the same, an internal revenue tax of 8 cents per pound; and such imported filled cheese and the packages containing the same shall be stamped, marked, and branded, as in the case of filled cheese manufactured in the United States.

[Sec. 4831 as originally enacted and in effect July 1, 1960]

**§ 45.4831-1 Imposition and rate of tax.**

(a) *Domestic filled cheese.* Section 4831(a) imposes a tax on domestically manufactured filled cheese at the rate of 1 cent per pound. Any fractional part of a pound in a package shall be taxed as a pound.

(b) *Liability for tax on domestic filled cheese.* The manufacturer of the filled cheese is liable for the payment of the

tax imposed under section 4831(a). The tax accrues when the filled cheese is manufactured and is to be paid in the manner set forth in § 45.4832-1.

(c) *Imported filled cheese.* Section 4831(b) imposes a tax on filled cheese imported from a foreign country at the rate of 8 cents per pound. Any fractional part of a pound in a package shall be taxed as a pound. The tax imposed under section 4831(b) on imported filled cheese is in addition to any import duty imposed on such filled cheese.

(d) *Liability for tax on imported filled cheese—(1) Release of product.* The person importing the filled cheese shall be liable for the tax imposed under section 4831(b) and the tax must be paid by affixing the required stamps prior to release of the product from customs custody.

(2) *Purchase of stamps.* Stamps for the tax payment of imported filled cheese will be sold to the owner or consignee of such merchandise by the district director of internal revenue for the district in which is located the office of the collector of customs where the customs entry is filed, upon requisition therefor duly executed by an authorized customs officer.

(3) *Affixing and cancellation of stamps.* Filled cheese imported from foreign countries is not required to have the internal-revenue stamps affixed to the packages thereof and canceled unless and until such product is to be released from customs custody for consumption or sale in the United States. Such stamps shall be affixed and canceled by the owner or consignee while the product is in the custody of the proper customs officer, and such product shall not pass out of the custody of said officer until the stamps have been affixed and canceled. The mode of affixing the stamps to packages of domestic manufacturers prescribed in paragraph (b) of § 45.4832-1 is hereby made applicable to imported filled cheese. Each stamp so affixed shall be canceled by the owner or consignee writing or imprinting on the face thereof in distinct and legible letters and figures his name and date of cancellation, name of port, and customs entry number.

(e) *Exported filled cheese.* There is no provision for the omission of the tax on filled cheese exported from the United States and all filled cheese exported must be tax paid at the rate of 1 cent per pound.

#### § 45.4832 Statutory provisions; stamps.

SEC. 4832. *Stamps—(a) Method of payment—(1) Stamps.* The taxes imposed by section 4831 shall be represented by coupon stamps.

(2) *Assessment.* For assessment in case of omitted taxes, see subtitle F.

(b) *Emptied packages.* Whenever any stamped package containing filled cheese is emptied, it shall be the duty of the person in whose hand the same is to destroy the stamps thereon.

(c) *Other stamp provisions.* The provisions of law governing the engraving, issue, sale, accountability, effacement, and destruction of stamps relating to tobacco and snuff, as far as applicable, shall apply to stamps

provided for by paragraph (1) of subsection (a).

[Sec. 4832 as originally enacted and in effect July 1, 1960]

#### § 45.4832-1 Affixing and canceling of stamps.

(a) *Domestic filled cheese.* The tax imposed under section 4831(a) on filled cheese of domestic manufacture shall be paid by the manufacturer thereof by the affixing of stamps to the packages before removal from the place where made.

(b) *Affixing and cancellation of stamps.* Filled-cheese stamps have been prepared in denominations of 1, 10, 20, and 40 cents with 10 stamps to a sheet. Such stamps are obtainable upon application on Form 218 to the district director for the district in which the factory is located. On the withdrawal of a package of filled cheese the proper tax-paid stamp must be securely affixed to the side thereof and immediately canceled by stamping or perforating the factory number, internal revenue district, State, and date thereon. Illustration: "Fac. No. 12, Chicago District, Ill.", over "April 15, 1960." For provisions relating to affixing and cancellation of stamps in respect of imported filled cheese, see paragraph (d) (3) of § 45.4831-1.

#### § 45.4832-2 Emptied packages.

Whenever any stamped package containing filled cheese is emptied, the person in whose hands such package is shall destroy the stamps affixed thereon.

#### § 45.4832-3 Other stamp provisions.

For regulations with respect to the engraving, issuing, sale, accountability, effacement, and destruction of stamps, see Subpart L of this part.

#### § 45.4833 Statutory provisions; requirements applicable to manufacturers.

SEC. 4833. *Requirements applicable to manufacturers—(a) Packing requirements—(1) Marks, stamps, and packages.* Filled cheese shall be packed by the manufacturers in wooden packages only, not before used for that purpose, and marked, stamped, and branded with the words "filled cheese" in black-faced letters not less than two inches in length, in a circle in the center of the top and bottom of the cheese; and in black-faced letters not less than two inches in length in line from the top to the bottom of the cheese, on the side in four places equidistant from each other; and the package containing such cheese shall be marked in the same manner, and in the same number of places, and in the same description of letters as above provided for the marking of the cheese; and all sales or consignments made by manufacturers of filled cheese to wholesale dealers in filled cheese or to exporters of filled cheese shall be in original stamped packages.

(2) *Label.* Every manufacturer of filled cheese shall securely affix, by pasting on each package containing filled cheese manufactured by him, a label on which shall be printed, besides the number of the manufactory and the district and State in which it is situated, these words: "Notice. The manufacturer of the filled cheese herein contained has complied with all the requirements of the law. Every person is cautioned

not to use either this package again or the stamp thereon again, nor to remove the contents of this package without destroying said stamp, under the penalty provided by law in such cases."

(b) *Factory number and signs.* Every manufacturer of filled cheese shall put up such signs and affix such number to his factory as the Secretary or his delegate may by regulation require.

(c) *Bonds.* Every manufacturer of filled cheese shall file with the official in charge of the internal revenue district in which his manufactory is located such bonds as the Secretary or his delegate may by regulation require. The bond required of such manufacturer shall be in a penal sum of not less than \$5,000; and the amount of said bond may be increased from time to time, and additional sureties required, at the discretion of the Secretary or his delegate.

[Sec. 4833 as originally enacted and in effect July 1, 1960]

#### § 45.4833-1 Requirements applicable to manufacturers.

(a) *Packing requirements.* (1) All filled cheese shall be packed by the manufacturer thereof in wooden packages only, not before used for that purpose. The law does not fix the size of the manufacturers' packages. The contents of all packages must be completely covered. Crates with openings between slats may not be used as original packages. A package which has once been used for packing filled cheese may be taken apart and the material, from which all stamps, marks, and brands have been effectually removed, may be used in construction of new containers. All filled cheese sold by manufacturers of filled cheese shall be in original stamped packages.

(2) A package of filled cheese, to meet all the requirements of the law and regulations must be branded (paragraph (b) of this section), have caution notice label affixed (paragraph (c) of this section), and have proper stamp or stamps affixed and canceled (paragraph (b) of § 45.4832-1).

(3) Manufacturers and dealers may incase properly stamped and branded original packages of filled cheese in additional coverings or wrappers, provided such additional coverings or wrappers have duly impressed or stenciled thereon the brand as prescribed in paragraph (b) of this section, and also the following additional inscription: "The original package herein contained has been duly tax paid and proper stamp is affixed."

(b) *Branding requirements.* (1) Each cheese shall be marked, stamped, and branded with the words "filled cheese" in black-faced letters, not less than 2 inches in length, in a circle in the center of the top and bottom of the cheese; and in like letters, in four different places, equidistant from each other, on the side of the cheese, in line from the top to the bottom thereof. Like brands are required upon the wooden packages containing such cheese. Where the consistency of the filled cheese will not permit of the brand being applied directly thereto it will be sufficient if the package is duly branded as herein required.

(2) The width of the letters in the above brands shall not be less than 1 inch over all, with quarter-inch stem. Section 4833(a)(1) prescribes that the brands for the side of the cheese shall be put on in line from top to bottom. Where the cheese is not sufficiently thick to accommodate these words in a perpendicular or vertical line, they may be branded in a line running diagonally from top to bottom.

(3) Each cheese, likewise the wooden package therefor, shall, in addition to the above brands required upon the top and bottom surfaces, be branded with words and figures indicating the factory number, the internal revenue district, State, and the weight of the cheese, in the order observed in the following example:

Factory No. 1, Chicago District, Ill.  
30 Pounds  
Filled Cheese

(4) All letters and figures in the above brand must be in black-faced block type, not less than 1 inch in width over all, with quarter-inch stems in the words "filled cheese" and not less than 1 inch square in the remaining words.

(5) If a manufacturer desires to place his name upon the filled cheese, or upon the wooden package therefor, he may do so, provided such brand in nowise overshadows, subordinates, or conceals the Government brand above prescribed by the law and the regulations in this part.

(c) *Labeling requirements.* Every manufacturer's package of filled cheese must, before removal from the bonded premises where made, have printed thereon or securely affixed on the side or end thereof by pasting, in such a way as to be exposed to public view and to be easily read, a label on which is printed the number of the manufactory and the internal revenue district and State in which it is situated, and the words of the caution notice as provided by section 4833(a)(2).

(2) The prescribed wording must be in plain, open, and legible letters in black ink, and shall occupy a space not less than 3 inches long and not less than 1½ inches in width, and when in label form, it shall be printed on plain white paper and shall be substantially in the following form:

Factory No. ----- District.  
State of -----

Notice: The manufacturer of the filled cheese herein contained has complied with all the requirements of the law. Every person is cautioned not to use either this package again or the stamp thereon again, nor to remove the contents of this package without destroying said stamp, under the penalty provided by law in such cases.

#### § 45.4833-2 Factories.

(a) *Premises.* Unless otherwise approved by the district director, another factory may not be operated at the same time within the premises described in a manufacturer's notice. (See paragraph (d) of this section.)

(b) *Manufacturer's sign.* Every manufacturer of filled cheese shall place and keep over the principal entrance to the building wherein his business is carried on, so that it can be distinctly seen, a sign with letters thereon not less than

3 inches in height, painted in oil colors or gilded, giving his full name and business and the number of his manufactory.

(c) *Factory number.* Each filled-cheese factory shall be assigned a number by the district director, which number shall not be held at the same time by any other manufacturer of filled cheese in his district, nor thereafter changed except for reasons approved by the district director. If the manufacturer removes to a new location in the same district, he will retain his old number. Upon removal from one internal revenue district to another a new number will be assigned by the district director for the district to which removed. When a factory is closed, the number which is released will not be reassigned during the balance of the fiscal year.

(d) *Manufacturer's notice.*—(1) *Execution of form.* Before commencing business, and immediately on the first day of July thereafter as long as he continues in the business, a manufacturer of filled cheese shall file with the district director a notice of intention to manufacture. This notice shall be prepared on Form 213 which may be obtained from the district director. The premises described in the notice shall conform with the requirements of this section.

(2) *Notice of change.* A new notice shall be filed with the district director before or immediately upon making any change either in location or in the premises or ownership of the business as described in the original notice.

#### § 45.4833-3 Bonding.

(a) *Requirement.* Every manufacturer of filled cheese, before incurring any liability for the tax imposed by section 4831, shall file a bond with the district director in accordance with the provisions of paragraph (b) of this section.

(b) *Bond.*—(1) *In general.* The bond required under paragraph (a) of this section shall be executed in accordance with the form, instructions, and regulations applicable thereto. Such bond shall be conditioned that the principal shall not engage in any attempt, by himself or by collusion with others, to defraud the United States of any tax under section 4831; that he shall render truly and completely all the returns and inventories required by law or regulations in respect of such tax and shall pay all such taxes for which he is liable; and that he shall comply with all requirements of law and regulations with respect to such taxes. The penal sum of such bond shall be not less than \$5,000; and the sum of said bond may be increased from time to time at the discretion of the district director. Copies of the form to be used in filing the bond may be obtained from any district director.

(2) *Cancellation clause.* The bond required under paragraph (a) of this section may be accepted with a cancellation clause incorporated therein. Such cancellation clause shall provide that:

(i) Any surety on the bond may at any time give notice to the principal and the district director that he desires to be relieved of liability under said bond

after a date named, which shall be at least 60 days after the receipt of notice by the district director.

(ii) If the notice is not withdrawn in writing prior to the date named in the notice, the rights of the principal as supported by said bond shall be terminated on such date (unless supported by another bond or bonds), and the surety shall be relieved from liability under said bond for any acts done wholly subsequent to said date. The surety shall, however, remain liable for any unpaid tax liability incurred by the principal before cancellation, in addition to penalties and interest, unless the principal pays such tax and penalties and interest.

(iii) Said notice may not be given by an agent of the surety, unless it is accompanied by a power of attorney duly executed by the surety authorizing the agent to give such notice or by a verified statement that such power of attorney is on file with the Treasury Department.

(3) *New or additional bond.* The district director may require a new or additional bond under this section in any case where he deems it necessary or desirable in order to protect the interest of the United States.

(4) *Other provisions relating to bonds.* For general provisions relating to bonds, including such matters as the surety or sureties required, see §§ 301.7101 and 301.7101-1 of this chapter (Regulations on Procedure and Administration).

#### § 45.4834 Statutory provisions; requirements applicable to wholesale and retail dealers.

SEC. 4834. *Requirements applicable to wholesale and retail dealers.*—(a) *Signs.* Every wholesale dealer and every retail dealer in filled cheese shall display in a conspicuous place in his salesroom a sign bearing the words "Filled cheese sold here" in black-faced letters not less than six inches in length, upon a white ground, with the name and number of the revenue district in which his business is conducted.

(b) *Selling requirements.* Retail dealers in filled cheese shall sell only from original stamped packages, and shall pack the filled cheese when sold in suitable wooden or paper packages, which shall be marked and branded in accordance with rules and regulations to be prescribed by the Secretary or his delegate.

[Sec. 4834 as originally enacted and in effect July 1, 1960]

#### § 45.4834-1 Signs to be displayed by wholesale and retail dealers.

Each retail and each wholesale dealer in filled cheese shall display in a conspicuous place in his salesroom a sign bearing the words "Filled cheese sold here" in black-faced letters not less than six inches in length, upon a white ground, with the name of the revenue district in which the business is conducted. Concealment of the sign from full view of the public will not be deemed a compliance with the law. If a dealer has more than one salesroom, he must post the requisite sign in each such room.

#### § 45.4834-2 Packaging requirements.

Retail dealers in filled cheese must sell only from original stamped packages, and shall pack the filled cheese sold by them in suitable wooden or paper packages which shall be marked and branded

as provided in § 45.4834-3. Wooden or paper packages similar to those usually employed in selling butter and lard at retail may be used by the retail dealer in filled cheese. There is no restriction as to the quantity of filled cheese that a retailer may sell at one sale, but he must remove the product from the original manufacturer's package and repack in another package, made of either wood or paper, and place on such package the required marks and brands. A retail dealer who sells filled cheese in original packages for resale or to another retailer incurs additional liability to special tax as a wholesale dealer. (See section 4841(b).)

#### § 45.4834-3 Branding requirements.

Each retailer's wooden or paper package must have the name and address of the dealer marked or branded thereon, likewise the words "Pound" and "Filled Cheese," in letters not less than one-quarter inch square, and the quantity written, marked, or branded thereon in figures of the same size (one-quarter of an inch square), substantially as follows.

Richard Roe  
100 Doe Street  
Boston

1 pound Filled Cheese

The words "Filled Cheese" and "Pound" which are required to be marked or branded on retailers' wooden or paper packages, in letters not less than one-quarter inch square, and the quantity which is required to be written, marked or branded thereon in figures of like size, must be so placed so as to be plainly visible to the purchaser at the time of delivery to him. Illegible or concealed marks and brands are not those contemplated and required by the law and regulations. It will not be deemed a compliance with the regulations in this part if the words "Filled Cheese" and the other required words and figures shall be illegibly branded or marked or so placed as to be concealed from view, by being on the inside of the package or by folding in the stamped portion of the paper sheet used for wrapping, or otherwise. The required words and figures must be legibly printed or branded and conspicuously placed, and no other word or business card should be placed in such juxtaposition thereto as to divert attention from the fact that the contents of the package are filled cheese. The color of the ink with which the words are marked or branded must be black.

#### § 45.4836 Statutory provisions; cross references.

Sec. 4836. *Cross references.* For definitions, penalties, and other general and administrative provisions, see section 4846 and subtitle F.

[Sec. 4836 as originally enacted and in effect July 1, 1960]

#### § 45.4836-1 Cross references.

(a) For definitions relating to filled cheese see § 45.4846 and the regulations thereunder.

(b) For penalties for offenses relating to stamps, see § 45.7208.

(c) For penalties for unauthorized use or sale of stamps, see § 45.7209.

(d) For penalties for other offenses relating to stamps, see § 45.7271.

(e) For penalty for failure to register, see § 45.7272.

(f) For other administrative provisions relating to the tax imposed on filled cheese, see Subpart L.

### Occupational Tax

#### § 45.4841 Statutory provisions; imposition of tax.

Sec. 4841. *Imposition of tax*—(a) *Manufacturers.* Manufacturers of filled cheese shall pay a special tax of \$400 a year for each and every factory.

(b) *Wholesale dealers*—(1) *In general.* Wholesale dealers in filled cheese shall pay a special tax of \$250 a year.

(2) *Manufacturers selling at wholesale.* Any manufacturer of filled cheese who has given the required bond and paid the required special tax, and who sells only filled cheese of his own production, at the place of manufacture, in the original packages, to which the tax-paid stamps are affixed, shall not be required to pay the special tax of a wholesale dealer in filled cheese on account of such sales.

(c) *Retail dealers.* Retail dealers in filled cheese shall pay a special tax of \$12 a year.

[Sec. 4841 as originally enacted and in effect July 1, 1960]

#### § 45.4841-1 Imposition and rate of tax.

Section 4841 imposes a special tax in the case of manufacturers, wholesale dealers, and retail dealers of filled cheese at the following rates:

- (a) Manufacturers----- \$400 per year for each factory.
- (b) Wholesale dealers----- \$250 per year.
- (c) Retail dealers----- \$12 per year.

#### § 45.4841-2 Applicability of tax.

(a) *Manufacturers.* Every person, firm, or corporation who manufactures filled cheese for sale shall be deemed a manufacturer of filled cheese.

(b) *Wholesale dealers.* Every person, firm, or corporation who sells or offers for sale filled cheese in the original manufacturer's package for resale, or to retail dealers as defined in paragraph (c) of this section, shall be deemed a wholesale dealer in filled cheese. A qualified manufacturer who sells only tax-paid filled cheese of his own production at the place of manufacture is not liable as a wholesale dealer.

(c) *Retail dealers.* Every person who sells filled cheese at retail, not for resale but for actual consumption, shall be regarded as a retail dealer in filled cheese.

(d) *Payment of special tax.* Every person liable for the special tax imposed by section 4841 must make a return on Form 11 to the district director, pay the special tax, and comply with the provisions contained in Subpart K, relating to special taxes.

(e) *Computation of tax.* For regulations relating to computation of the tax, see § 45.4901-1(b).

#### § 45.4841-3 Liability of wholesale dealers and retail dealers for special tax.

(a) *In general.* (1) Except in the case of a manufacturer selling filled cheese of his own production at the place

of manufacture, a person is liable to special tax as a dealer in filled cheese, either wholesale or retail as the case may be, at each and every place where he sells, or offers for sale, filled cheese. The place where the delivery, either actual or constructive, which transfers ownership from vendor to vendee, is made is the place of sale and for which special tax is required to be paid. A special tax stamp can be issued to a dealer in filled cheese only for a fixed place of business. One who travels from place to place and makes sales of filled cheese incurs liability to special tax at each place where such sales and deliveries are made.

(2) Dealers in cheese should ascertain the true character of the article which they sell or offer for sale. If they are found to have sold filled cheese, though they believed it to be genuine cheese, they nevertheless are liable to special tax as dealers in filled cheese.

(3) Special tax stamps are not transferable from one person to another. When a new member is added to a firm a new stamp is required.

(4) Any number of persons doing business in copartnership at any one place are required to pay but one special tax.

(b) *Situations where special tax liability is not incurred.* Special tax liability is not incurred in respect to sales by:

(1) A receiver appointed by the court to sell filled cheese under order of the court.

(2) A trustee when he carries on the business at the principal's store and under the special tax stamp issued to the principal.

(3) A member of a firm acquiring the interests of the other members and carrying on the business under the stamp issued to the firm.

(4) A qualified dealer moving from one location to another provided he registers the change with the district director during the calendar month in which it occurred.

(5) The legal representative of a deceased special taxpayer carrying on the business until the expiration of the stamp but the change must be registered with the district director within the month in which it was made.

(6) An army post exchange under the complete control of the Department of Defense.

(7) A keeper of a restaurant who furnishes filled cheese merely to patrons as a part of their meals even though a separate charge is made for the filled cheese served.

(8) A transportation company selling filled cheese to secure freight charges.

#### § 45.4841-4 Storing filled cheese.

Manufacturers of, and wholesale dealers in, filled cheese may store tax-paid packages of such product at places other than those named in their special-tax stamps and may make deliveries from such places of storage without incurring additional special tax liability, provided that sales of filled cheese so stored are absolutely completed by the manufacturers or wholesale dealers at their registered places of business by

constructive delivery there prior to actual removal of the goods from the place of storage for delivery to purchasers. Receipt of an order at the place of business of a manufacturer or dealer and the sending of such order to the storage house for delivery is not a sale of goods at said place of business. A manufacturer or dealer must not merely receive the order at his place of business, but he must make out there and deliver to the customer ordering, or send to him direct a bill of sale in each instance transferring to him the ownership of the goods before there is an actual delivery from the place of storage.

**§ 45.4842 Statutory provisions; cross references.**

SEC. 4842. *Cross references*—(a) *Definitions*. For definitions applicable to this subpart, see section 4846.

(b) *Other provisions*. For penalties and other general and administrative provisions applicable to this subpart, see chapter 40 and subtitle F.

[Sec. 4842 as originally enacted and in effect July 1, 1960]

**§ 45.4842-1 Cross references.**

(a) For provisions relating to registration in case of a trade or business on which a special tax is imposed, see §§ 45.7011 and 45.7011-1.

(b) For requirements relating to posting occupational tax stamps, see §§ 45.6806 and 45.6806(a)-1.

(c) For other administrative requirements relating to occupational taxes, see subpart K of this part.

(d) For penalties, see sections 7266, 7272, and 7273.

**§ 45.4846 Statutory provisions; definitions.**

SEC. 4846. *Definitions*. For the purposes of this part—(1) *Cheese*. The word "cheese" shall be understood to mean the food product known as cheese, and made from milk or cream and without the addition of butter, or any animal, vegetable, or other oils or fats foreign to such milk or cream, with or without additional coloring matter.

(2) *Filled cheese*. Certain substances and compounds shall be known and designated as "filled cheese," namely: All substances made of milk or skimmed milk, with the admixture of butter, animal oils or fats, vegetable or any other oils, or compounds foreign to such milk, and made in imitation or semblance of cheese. Substances and compounds, consisting principally of cheese with added edible oils, which are not sold as cheese or as substitutes for cheese but are primarily useful for imparting a natural cheese flavor to other foods shall not be considered "filled cheese" within the meaning of this part.

(3) *Manufacturer*. Every person, firm, or corporation who manufactures filled cheese for sale shall be deemed a manufacturer of filled cheese.

(4) *Wholesale dealer*. Every person, firm, or corporation who sells or offers for sale filled cheese, in the original manufacturer's packages for resale, or to retail dealers as defined in paragraph (5) shall be deemed a wholesale dealer in filled cheese.

(5) *Retail dealer*. Every person who sells filled cheese at retail, not for resale, and for actual consumption, shall be regarded as a retail dealer in filled cheese.

[Sec. 4846 as originally enacted and in effect July 1, 1960]

**§ 45.4846-1 Definitions.**

(a) *Cheese*. The term "cheese" shall be understood to mean the food product known as cheese, and made from milk or cream and without the addition of butter, or any animal, vegetable, or other oils or fats foreign to such milk or cream, with or without additional coloring matter.

(b) *Filled cheese*. (1) The term "filled cheese" shall include all substances made of milk or skimmed milk, with the admixture of butter, animal oils or fats, vegetable or any other oils, or compounds foreign to such milk, and made in imitation or semblance of cheese. Substances and compounds, consisting principally of cheese with added edible oils, which are not sold as cheese or as substitutes for cheese but are primarily useful for imparting a natural cheese flavor to other foods shall not be considered "filled cheese" within the meaning of this chapter.

(2) The mixture of cheese with coloring matter does not render it liable to tax as filled cheese, such mixture being permitted under the definition given in section 4846(a) and paragraph (a) of this section. If, however, the annatto or other coloring matter is mixed with a vegetable oil or an animal fat as a mordant, resulting in a compound resembling cheese, this compound would be liable to tax as filled cheese.

(3) The manufacture of cheese from synthetic cream which is prepared by homogenizing a mixture of butter and skimmed milk or a mixture of butter, milk powder, and water results in a product which is clearly "filled cheese" as defined by statute, being a substance made of milk or skimmed milk with an admixture of butter in imitation or semblance of cheese.

**§ 45.4846-2 Cross reference.**

For definition and application of the terms "manufacturer", "wholesale dealer" and "retail dealer", see section 4841 and the regulations thereunder.

**Subpart I—Contracts of Sale of Cotton for Future Delivery**

**§ 45.4851 Statutory provisions; imposition of tax.**

SEC. 4851. *Imposition of tax*—(a) *Rate*. Upon each contract of sale of any cotton for future delivery made at, on, or in any exchange, board of trade, or similar institution or place of business, there shall be imposed a tax in the nature of an excise of 2 cents for each pound of the cotton involved in any such contract.

(b) *By whom paid*. The tax imposed by subsection (a) shall be paid by the seller of the cotton involved in the contract of sale.

[Sec. 4851 as originally enacted and in effect July 1, 1960]

**§ 45.4851-1 Imposition and rate of tax.**

(a) *Imposition of tax*. Section 4851 imposes a tax upon each contract of sale of cotton for future delivery made at, on, or in any exchange, board of trade, or similar institution or place of business, except contracts for the sale of specific cotton for future delivery which comply with the provisions of the regulations in this subpart.

(b) *Rate of tax*. The tax imposed under section 4851 shall be computed at the rate of 2 cents per pound for each pound of cotton involved in a contract subject to tax.

**§ 45.4851-2 Liability for tax.**

The tax imposed by section 4851 shall be paid by the seller of the cotton involved in each contract subject to tax.

**§ 45.4852 Statutory provisions; definition.**

SEC. 4852. *Definition*. For the purpose of this subchapter, the term "contract of sale" shall be held to include sales, agreements of sale, and agreements to sell.

[Sec. 4852 as originally enacted and in effect July 1, 1960]

**§ 45.4852-1 Definitions.**

(a) *Contract of sale*. The term "contract of sale" shall be held to include sales, agreements of sale, and agreements to sell.

(b) *Designation of contracts*—(1) *Contracts subject to section 4863*. The term "contracts subject to section 4863" shall mean basis grade contracts made in compliance with the provisions of section 4863 and the regulations thereunder.

(2) *Contracts subject to section 4864*. The term "contracts subject to section 4864" shall mean tendered grade contracts made in compliance with the provisions of section 4864 and the regulations thereunder.

(3) *Contracts subject to section 4865*. The term "contracts subject to section 4865" shall mean specific grade contracts made in compliance with section 4865 and the regulations thereunder.

**§ 45.4853 Statutory provisions; form and validity of contracts.**

SEC. 4853. *Form and validity of contracts*—(a) *Form*. Each contract of sale of cotton for future delivery mentioned in section 4851 (a) shall be in writing plainly stating, or evidenced by written memorandum showing, the terms of such contract, including the quantity of the cotton involved and the names and addresses of the seller and buyer in such contract, and shall be signed by the party to be charged, or by his agent in his behalf. If the contract or memorandum specify in bales the quantity of the cotton involved, without giving the weight, each bale shall, for the purpose of this subchapter, be deemed to weigh 500 pounds.

(b) *Validity*. No contract of sale of cotton for future delivery mentioned in section 4851(a), which does not conform to the requirements of subsection (a) of this section and has not the necessary stamps affixed thereto as required by section 4871, shall be enforceable in any court of the United States by, or on behalf of, any party to such contract or his privies.

[Sec. 4853 as originally enacted and in effect July 1, 1960]

**§ 45.4853-1 Form and validity of contracts.**

(a) *Form*—(1) *In general*. Every contract mentioned in section 4851(a) for the sale of cotton for future delivery shall be in writing and shall state, or shall be evidenced by written memorandum showing, (i) the terms of the contract, (ii) the quantity of cotton involved, (iii) the name and address of

the buyer, and (iv) the name and address of the seller. The contract or memorandum shall be signed by the person to be charged or by his agent in his behalf. For the purpose of this subpart, if the contract or memorandum specifies in bales the quantity of cotton involved, without giving the weight, each bale shall be deemed to weigh 500 pounds.

(2) *Exceptions.* (i) Contracts for sale of cotton made at, on, or in any exchange, board of trade, or similar institution or place of business and evidenced by memoranda containing the terms of such contract and the signatures of the parties to be charged in the form of punched and/or printed numbers, letters and symbols by the use of machines operated by a clearing house or a clearing association, pursuant to authority given to such clearing house or association by the members to be charged, are considered to be in compliance with section 4853(a) and subparagraph (1) of this paragraph.

(ii) Variations in the method of operation caused by sales of more than 100 bales of cotton and involving, in some cases, more than a single buying or selling broker, will not result in a non-compliance with section 4853(a) provided there are memoranda containing the terms of the contract and the signatures of the parties to be charged in the form of punched and/or printed numbers, letters or symbols as provided in subdivision (i) of this subparagraph.

(b) *Validity of contracts.* No contract for the sale of cotton for future delivery mentioned in section 4851(a) which does not conform to the requirements of section 4853 and paragraph (a) of this section and which does not have affixed thereto the necessary stamps required by section 4871, shall be enforceable in any court of the United States by, or on behalf of, any party to such contract or his privies.

(c) *Stating number of bales involved.* Each contract must provide that all tenders of cotton shall be the full number of bales involved therein. Such variations of the number of bales may be permitted as is necessary to bring the total weight of the cotton tendered within the provisions of the contract as to weight, and necessary variations in the weight of the cotton tendered may be permitted not to exceed 1 percent of the total weight specified in the contract.

#### § 45.4854 Statutory provisions; cotton standards.

Sec. 4854. *Cotton standards*—(a) *Source and description.* Subject to the provisions of section 6 of the Act of March 4, 1923 (42 Stat. 1518; 7 U.S.C. 56), the Secretary of Agriculture is authorized, from time to time, to establish and promulgate standards of cotton by which its quality or value may be judged or determined, including its grade, length of staple, strength of staple, color, and such other qualities, properties, and conditions as may be standardized in practical form, which, for the purpose of this subchapter, shall be known as the "Official cotton standards of the United States": *Provided*, That any standard of any cotton established and promulgated under this subchapter by the Secretary of Agriculture shall not be changed or replaced within a period less than one year from and after the date of the promulgation thereof by the

Secretary of Agriculture: *Provided further*, That no change or replacement of any standard of any cotton established and promulgated under this subchapter by the Secretary of Agriculture shall become effective until after one year's public notice thereof, which notice shall specify the date when same is to become effective.

(b) *Practical forms*—(1) *Preparation, certification, and distribution.* The Secretary of Agriculture is authorized and directed to prepare practical forms of the official cotton standards which shall be established by him, and to furnish such practical forms from time to time, upon request, to any person, the cost thereof, as determined by the Secretary of Agriculture, to be paid by the person requesting the same, and to certify such practical forms under the seal of the Department of Agriculture and under the signature of the said Secretary, thereto affixed by himself or by some official or employee of the Department of Agriculture thereunto duly authorized by the said Secretary.

(2) *Disposition of receipts from sales.* All sums collected by the Secretary of Agriculture for furnishing practical forms under paragraph (1) shall be deposited and covered into the Treasury as miscellaneous receipts.

[Sec. 4854 as originally enacted and in effect July 1, 1960]

#### § 45.4861 Statutory provisions; spot cotton.

Sec. 4861. *Spot cotton.* This subchapter shall not be construed to impose a tax on any sale of spot cotton.

[Sec. 4861 as originally enacted and in effect July 1, 1960]

#### § 45.4861-1 Exemption of spot cotton.

The tax imposed under section 4851 is not applicable to the sale of spot cotton.

#### § 45.4862 Statutory provisions; definition of bona fide spot markets.

Sec. 4862. *Definition of bona fide spot markets*—(a) *Definition.* For the purpose of this subchapter, the only markets which shall be considered bona fide spot markets shall be those which the Secretary of Agriculture shall, from time to time, after investigation, determine and designate to be such, and of which he shall give public notice.

(b) *Determination.* In determining, pursuant to the provisions of this subchapter, what markets are bona fide spot markets, the Secretary of Agriculture is directed to consider only markets in which spot cotton is sold in such volume and under such conditions as customarily to reflect accurately the value of Middling cotton and the differences between the prices or values of Middling cotton and of other grades of cotton for which standards shall have been established by the Secretary of Agriculture: *Provided*, That if there be not sufficient places, in the markets of which are made bona fide sales of spot cotton of grades for which standards are established by the Secretary of Agriculture, to enable him to designate at least five spot markets in accordance with section 4863(c), he shall, from data as to spot sales collected by him, make rules and regulations for determining the actual commercial differences in the value of spot cotton of the grades established by him as reflected by bona fide sales of spot cotton, of the same or different grades, in the markets selected and designated by him, from time to time, for that purpose, and in that event differences in value of cotton of various grades involved in contracts made pursuant to section 4863 (a) and (b) shall be determined in compliance with such rules and regulations: *Provided further*, That it shall be the duty of any person engaged in the business of dealing in cotton, when re-

quested by the Secretary of Agriculture or any agent acting under his instructions, to answer correctly to the best of his knowledge, under oath or otherwise, all questions touching his knowledge of the number of bales, the classification, the price or bona fide price offered, and other terms of purchase or sale, of any cotton involved in any transaction participated in by him, or to produce all books, letters, papers, or documents in his possession or under his control relating to such matter.

[Sec. 4862 as originally enacted and in effect July 1, 1960]

#### § 45.4863 Statutory provisions; basis grade contracts.

Sec. 4863. *Basis grade contracts*—(a) *Conditions.* No tax shall be imposed under this subchapter on any contract of sale mentioned in section 4851(a) if the contract comply with each of the following conditions:

(1) *Conformity with section 4853(a) and regulations.* Conform to the requirements in section 4853(a) and the rules and regulations made pursuant to this subchapter.

(2) *Specification of grade, price, and dates of sale and settlement.* Specify the basis grade for the cotton involved in the contract, which shall be one of the grades for which standards are established by the Secretary of Agriculture, except grades prohibited from being delivered on a contract made under this section by the fifth paragraph of this subsection, the price per pound at which the cotton of such basis grade is contracted to be bought or sold, the date when the purchase or sale was made, and the month or months in which the contract is to be fulfilled or settled: *Provided*, That middling shall be deemed the basis grade incorporated into the contract if no other basis grade be specified either in the contract or in the memorandum evidencing the same.

(3) *Provision for delivery of standard grades only.* Provide that the cotton dealt with therein or delivered thereunder shall be of or within the grades for which standards are established by the Secretary of Agriculture except grades prohibited from being delivered on a contract made under this section by paragraph (5) and no other grade or grades.

(4) *Provision for settlement on basis of actual commercial differences.* Provide that in case cotton of grade other than the basis grade be tendered or delivered in settlement of such contract, the differences above or below the contract price which the receiver shall pay for such grades other than the basis grade shall be the actual commercial differences, determined as hereinafter provided.

(5) *Prohibition of delivery of inferior cotton.* Provide that cotton that, because of the presence of extraneous matter of any character, or irregularities or defects, is reduced in value below that of low middling, or cotton that is below the grade of low middling, or, if tinged, cotton that is below the grade of strict middling, or, if yellow stained, cotton that is below the grade of good middling, the grades mentioned being of the official cotton standards of the United States, or cotton that is less than seven-eighths of an inch in length of staple, or cotton of perished staple, or of immature staple, or cotton that is "gin cut" or reginned, or cotton that is "repacked" or "false packed" or "mixed packed" or "water packed," shall not be delivered on, under, or in settlement of such contract.

(6) *Provisions for tender in full, notice of delivery date, and certificate of grade.* Provide that all tenders of cotton under such contract shall be the full number of bales involved therein, except that such variations of the number of bales may be permitted as is necessary to bring the total weight of the cotton tendered within the provisions of the contract as to weight; that, on the fifth busi-

ness day prior to delivery, the person making the tender shall give to the person receiving the same written notice of the date of delivery, and that, on or prior to the date so fixed for delivery, and in advance of final settlement of the contract, the person making the tender shall furnish to the person receiving the same a written notice or certificate stating the grade of each individual bale to be delivered and, by means of marks or numbers, identifying each bale with its grade.

(7) *Provision for tender and settlement in accordance with Government classification.* Provide that all tenders of cotton and settlements therefor under such contract shall be in accordance with the classification thereof made under the regulations of the Secretary of Agriculture by such officer or officers of the Government as shall be designated for the purpose, and the costs of such classification shall be fixed, assessed, collected, and paid as provided in such regulations. All moneys collected as such costs may be used as a revolving fund for carrying out the purposes of this paragraph. The Secretary of Agriculture is authorized to prescribe regulations for carrying out the purposes of this paragraph, and the certificates of the officers of the Government as to the classification of any cotton for the purposes of this paragraph shall be accepted in the courts of the United States in all suits between the parties to such contract, or their privies, as prima facie evidence of the true classification of the cotton involved.

(b) *Incorporation of conditions in contracts.* The provisions of subsection (a) (3), (4), (5), (6), and (7) shall be deemed fully incorporated into any such contract if there be written or printed thereon, or on the memoranda evidencing the same, at or prior to the time the same is signed, the phrase "Subject to Internal Revenue Code, section 4863."

(c) *Delivery allowances.* For the purpose of this section, the differences above or below the contract price which the receiver shall pay for cotton of grades above or below the basis grade in the settlement of a contract of sale for the future delivery of cotton shall be determined by the actual commercial differences in value thereof upon the sixth business day prior to the day fixed, in accordance with subsection (a) (6), for the delivery of cotton on the contract, established by the sale of spot cotton in the spot markets of not less than five places designated for the purpose from time to time by the Secretary of Agriculture, as such values were established by the sales of spot cotton, in such designated five or more markets: *Provided*, That for the purpose of this subsection such values in the said spot markets be based upon the standards for grades of cotton established by the Secretary of Agriculture: *And provided further*, That whenever the value of one grade is to be determined from the sale or sales of spot cotton of another grade or grades, such value shall be fixed in accordance with rules and regulations which shall be prescribed for the purpose by the Secretary of Agriculture.

[Sec. 4863 as originally enacted and in effect July 1, 1960]

**§ 45.4863-1 Exemption of basis grade contracts, tendered grade contracts, and specific grade contracts.**

(a) *In general.* The tax imposed under section 4851 shall not apply to contracts of sale of specific cotton for future delivery made at, on, or in any exchange, board of trade, or similar institution or place of business which meet the requirements, and are made in compliance with the conditions, of section 4863, 4864, or 4865.

(b) *Exchange rules and other matters not to affect contracts exempt from tax under section 4863, 4864, or 4865.* No contract shall be deemed to comply with the conditions of section 4863, 4864, or 4865 so as to exempt it from taxation if it contains or incorporates therein by reference or otherwise any provision or any by-law, rule, or custom of any exchange, board of trade, or similar institution or place of business, which is inconsistent or in conflict with any requirement of section 4863, 4864, or 4865, as the case may be, nor if the parties enter into any collateral or additional agreement or understanding, either verbal or written, respecting the subject matter of such contract which is inconsistent or in conflict with any requirement of said sections.

(c) *Provisions deemed inconsistent and in conflict with requirements.* Any such provision, by-law, rule, custom, agreement, or understanding which in any manner takes away or impairs the right of the person obligated to deliver cotton, to tender any cotton which is of or within the grades, of the quality, and of the length of staple deliverable under a contract made in compliance with section 4863, 4864, or 4865; or which takes away or impairs his right to prepare for himself, or to have prepared by anyone at his direction, the written notice or certificate stating the grade of cotton pursuant to section 4863, or which takes away or impairs the right of either party to submit a dispute as to the classification of the cotton tendered to the Secretary of Agriculture, under a contract subject to section 4863 or 4864; or which contains any device, arrangement, or agreement for the adjustment of the price of the grade or grades of cotton tendered under a contract subject to section 4864, other than the basis grade specified in the contract, by any "fixed difference" system, or by arbitration, shall be deemed inconsistent and in conflict with the requirements of such sections, as the case may be.

(d) *Disputes as to classification to be referred to Secretary of Agriculture.* Contracts subject to sections 4863 and 4864, shall provide that, in case a dispute arises between the person making the tender and the person receiving the same as to the classification of any cotton tendered under the contract, either party may refer the question of the true classification of the cotton to the Secretary of Agriculture for determination, and that such dispute shall be referred and determined, and the cost thereof fixed, assessed, collected and paid in such manner and in accordance with such rules and regulations as may be prescribed by the Secretary of Agriculture.

**§ 45.4864 Statutory provisions; tendered grade contracts.**

Sec. 4864. *Tendered grade contracts—(a) Conditions.* No tax shall be imposed under this subchapter on any contract of sale mentioned in section 4851(a) if the contract—

(1) *Compliance with section 4863.* Comply with all the terms and conditions of section 4863 not inconsistent with this section; and

(2) *Provision for contingent specific performance.* Provide that, in case cotton of grade or grades other than the basis grade

specified in the contract shall be tendered in performance of the contract, the parties to such contract may agree, at the time of the tender, as to the price of the grade or grades so tendered, and that if they shall not then agree as to such price, then, and in that event, the buyer of said contract shall have the right to demand the specific fulfillment of such contract by the actual delivery of cotton of the basis grade named therein and at the price specified for such basis grade in said contract.

(b) *Incorporation of conditions in contract.* Contracts made in compliance with this section shall be known as "Section 4864 Contracts." The provisions of this section shall be deemed fully incorporated into any such contract if there be written or printed thereon, or on the memorandum evidencing the same, at or prior to the time the same is signed, the phrase "Subject to Internal Revenue Code, section 4864."

(c) *Application of section.* Nothing in this section shall be so construed as to relieve from the tax imposed by section 4851(a) any contract in which, or in the settlement of or in respect to which, any device or arrangement whatever is resorted to, or any agreement is made, for the determination or adjustment of the price of the grade or grades tendered other than the basis grade specified in the contract by any "fixed difference" system, or by arbitration, or by any other method not provided for by this subchapter.

[Sec. 4864 as originally enacted and in effect July 1, 1960]

**§ 45.4864-1 Exemption of tendered grade contracts.**

For regulations with respect to the exemption of tendered grade contracts, see the applicable provisions of § 45.4863-1.

**§ 45.4865 Statutory provisions; specific grade contracts.**

Sec. 4865. *Specific grade contracts—(a) Conditions.* No tax shall be imposed under this subchapter on any contract of sale mentioned in section 4851(a) if the contract complies with each of the following conditions:

(1) *Conformity with rules and regulations.* Conform to the rules and regulations made pursuant to this subchapter.

(2) *Specification of grade, price, dates of sale and delivery.* Specify the grade, type, sample, or description of the cotton involved in the contract, the price per pound at which such cotton is contracted to be bought or sold, the date of the purchase or sale, and the time when shipment or delivery of such cotton is to be made.

(3) *Prohibition of delivery of other than specified grade.* Provide that cotton of or within the grade or of the type, or according to the sample or description, specified in the contract shall be delivered thereunder, and that no cotton which does not conform to the type, sample, or description, or which is not of or within the grade specified in the contract shall be tendered or delivered thereunder.

(4) *Provision for specific performance.* Provide that the delivery of cotton under the contract shall not be effected by means of "set-off" or "ring" settlement, but only by the actual transfer of the specified cotton mentioned in the contract.

(b) *Incorporation of conditions in contract.* The provisions of subsection (a) (1), (3), and (4) shall be deemed fully incorporated into any such contract if there be written or printed thereon, or on the document or memorandum evidencing the same, at or prior to the time the same is entered into, the words "Subject to Internal Revenue Code, section 4865."

(c) *Application of section.* This section shall not be construed to apply to any con-

tract of sale made in compliance with section 4863 or 4864.

[Sec. 4865 as originally enacted and in effect July 1, 1960]

§ 45.4865-1 Exemption of specific grade contracts.

For regulations with respect to the exemption of specific grade contracts, see the applicable provisions of § 45.4863-1.

§ 45.4871 Statutory provisions; method of payment.

SEC. 4871. *Method of payment.* The tax imposed by section 4851 (a) shall be paid by means of stamps which shall be affixed to such contracts, or to the memoranda evidencing the same, and canceled in compliance with rules and regulations which shall be prescribed by the Secretary or his delegate.

[Sec. 4871 as originally enacted and in effect July 1, 1960]

§ 45.4871-1 Method of payment.

(a) *Stamps.* Documentary stamps issued under the internal revenue laws shall be used for payment of the taxes imposed by section 4851 (a) and may be obtained from (1) district directors and other duly authorized officials; (2) postmasters in all post offices of the first and second classes and such post offices of the third and fourth class as are located in county seats; (3) designated depositaries of the United States; and (4) any person who is duly appointed and acting as agent of any State for the sale of stock transfer stamps of such State, and designated by the Secretary or his delegate for the purpose.

(b) *Affixing stamps.* Stamps representing the tax due are to be affixed by the seller, at the time of signing, to each contract of sale of cotton for future delivery mentioned in section 4851, or to the memorandum evidencing the same, unless the contract under the law and regulations is not subject to tax.

(c) *Canceling stamps.* The person using or affixing a stamp shall write or stamp thereon with ink the initials of his name and the date, including the year, on which the same shall be attached or used, or shall, by cutting and canceling the stamps with a machine or punch, which will affix the initials and date aforesaid, so deface the stamp as to render it unfit for reuse. In addition to the foregoing, stamps of the value of 10 cents or more shall have three parallel incisions made by some sharp instrument lengthwise through the stamp after the stamp has been attached to the document: *Provided*, This will not be required where stamps are canceled by perforation. The cancellation by either method should not so deface the stamp as to prevent its denomination and genuineness from being readily determined.

§ 45.4872 Statutory provisions; collection and enforcement.

SEC. 4872. *Collection and enforcement—*  
(a) *Rules and regulations.* The Secretary or his delegate is authorized to make and promulgate such rules and regulations as he may deem necessary to collect the tax imposed by this subchapter and otherwise to enforce its provisions.

(b) *Records and returns.* Further to effect the purpose of subsection (a), the Secretary or his delegate shall require all persons coming within its provisions to keep such

records and statements of account, and may require such persons to make such returns verified under oath or otherwise, as will fully and correctly disclose all transactions mentioned in section 4851 (a), including the making, execution, settlement, and fulfillment thereof; he may require all persons who act in the capacity of a clearing house, clearing association, or similar institution for the purpose of clearing, settling, or adjusting transactions mentioned in section 4851 (a) to keep such records and to make such returns as will fully and correctly disclose all facts in their possession relating to such transactions.

(c) *Employment of officers and employees.* The Secretary or his delegate may appoint officers and employees to conduct the inspection necessary to collect said tax and otherwise to enforce this subchapter and all rules and regulations made by him in pursuance hereof.

[Sec. 4872 as originally enacted and in effect July 1, 1960]

§ 45.4872-1 Records of contracts of sale of cotton for future delivery.

All persons who make contracts of sale of cotton for future delivery at, on, or in any exchange, board of trade, or similar institution or place of business, whether said contracts shall be cleared and adjusted through a clearing association, or direct between seller and buyer, or otherwise, shall keep a record thereof showing:

(a) Name and address of contracting person keeping record.

(b) Name and address of other party to contract.

(c) Date contract was made.

(d) Quantity of cotton involved, in bales or pounds.

(e) Time specified in contract for delivery.

(f) Whether transaction is a purchase or a sale.

(g) Whether the contract is (1) a contract subject to section 4863, (2) a contract subject to section 4864, or (3) a

contract subject to section 4865, and the basis grade.

(h) Grade, type, sample, or description of cotton, if not basis grade.

(i) Specified price per pound.

(j) Date of delivery or settlement.

(k) Method of actual fulfillment or settlement.

(l) Amount of tax paid (or, if exempt, so state).

§ 45.4872-2 Records to be kept by cotton clearing associations.

All persons who act in the capacity of a clearing house or clearing association for the purpose of clearing, settling, or adjusting transactions mentioned in section 4851 (a) shall keep a record thereof showing:

(a) Name and address of clearing house or clearing association keeping record.

(b) Name and address of person for whom contract is cleared.

(c) Date contract was made.

(d) Quantity of cotton involved, in bales or pounds.

(e) Time specified in contract for delivery.

(f) Whether transaction is a purchase or a sale.

(g) Whether the contract is (1) a contract subject to section 4863, (2) a contract subject to section 4864, or (3) a contract subject to section 4865, and the basis grade.

(h) Grade, type, sample, or description of cotton, if not basis contract.

(i) Specified price per pound.

(j) Date of delivery or settlement.

(k) Method of actual fulfillment or settlement.

§ 45.4872-3 Form of record.

(a) *Forms prescribed.* For the purpose of uniformity and to enable the district director to check readily such information, the following forms of record are prescribed:

RECORD NO. 1—Contracts subject to Internal Revenue Code, section 4863

(Name and address of firm keeping the record)

Purchases for ..... delivery.  
The following transactions are made on the basis of middling and subject to section 4863, I.R.C., unless otherwise stated:

Date	Party or firm from whom bought	Address	Reference number <sup>1</sup>	Bales <sup>2</sup>	Price	Customer <sup>1</sup>	Settlement		Tax, if any
							Date	Method	

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(Name and address of firm keeping the record)

Sales for ..... delivery.  
The following transactions are made on the basis of middling and subject to section 4863, I.R.C., unless otherwise stated:

Date	Party or firm to whom sold	Address	Reference number <sup>1</sup>	Bales <sup>2</sup>	Price	Customer <sup>1</sup>	Settlement		Tax, if any
							Date	Method	

<sup>1</sup> Filling in of these columns optional.

<sup>2</sup> Transactions can be entered in 100-bale lots to a line; 50 lines to the page; 100 may be printed in on each line, if so desired.

## RECORD NO. 2—Contracts subject to Internal Revenue Code, section 4864

(Name and address of firm keeping the record)

Purchases for..... delivery.  
The following transactions are made on the basis of grade specified and subject to section 4864, I.R.C., unless otherwise stated:

Date	Party or firm from whom bought	Address	Reference number <sup>1</sup>	Bales <sup>2</sup>	Basis grade	Price	Customer <sup>1</sup>	Settlement <sup>3</sup>		Tax, if any
								Date	Method	

## OBVERSE PAGE

(Name and address of firm keeping the records)

Sales for..... delivery.  
The following transactions are made on the basis of grade specified and subject to section 4864, I.R.C., unless otherwise stated:

Date	Party or firm to whom sold	Address	Reference number <sup>1</sup>	Bales <sup>2</sup>	Basis grade	Price	Customer <sup>1</sup>	Settlement <sup>3</sup>		Tax, if any
								Date	Method	

<sup>1</sup> Filling in of these columns optional.<sup>2</sup> Transactions can be entered in 100-bale lots to a line; 50 lines to the page; 100 may be printed in on each line if so desired.<sup>3</sup> In case of actual delivery, state whether basis grade or what grade is delivered.

## RECORD NO. 3—Contracts subject to Internal Revenue Code, section 4865

(Name and address of firm keeping records)

The following transactions are made on the basis of grade, type, sample, or description and subject to section 4865, I.R.C., unless otherwise stated:

Date	Bought from—		Bales cotton	Description	Price	Terms	Time of shipment or delivery	Delivery reference	Tax paid or if exempt
	Name	Address							

## OBVERSE PAGE

(Name and address of firm keeping records)

The following transactions are made on the basis of grade, type, sample, or description and subject to section 4865, I.R.C., unless otherwise stated:

Date	Sold to—		Bales cotton	Description	Price	Terms	Time of shipment or delivery	Delivery reference	Tax paid or if exempt
	Name	Address							

RECORD NO. 4—Contracts subject to Internal Revenue Code, section 4863<sup>1</sup>

(Name and address of association keeping record)

The following contracts were cleared or adjusted for members of the ..... Cotton Exchange under section 4863, I.R.C.:

Brought forward, long	Purchase	Contracts in 100-bale lots	Grade	Price	Month of delivery	Method of settlement		Carried forward, long	Name of member	Brought forward, short	Sales	Contracts in 100-bale lots	Grade	Price	Month of delivery	Method of settlement		Carried forward, short
						Passed notices	Set-off									Passed notices	Set-off	

<sup>1</sup> If section 4864 contract or section 4865 contract, so state.

(b) *Use of prescribed forms.* The use of Record No. 1 is required to give information regarding all contracts made upon an exchange subject to section 4863, unless otherwise stated; the use of Record No. 2 is required to cover contracts subject to section 4864, unless otherwise stated; the use of Record No. 3 is re-

quired to cover contracts subject to section 4865, unless otherwise stated; and the use of Record No. 4 is required by persons who act in the capacity of a clearing house or clearing association for the purpose of clearing, settling or adjusting transactions mentioned in section 4851. Record Nos. 1, 2, and 3

shall contain 50 lines to a page, unless otherwise permitted by the Commissioner; and Record No. 4 shall contain a sufficient number of lines on one page to show all facts required to be disclosed under subchapter D of chapter 39 of the Code and this subpart unless otherwise permitted by the Commissioner. Persons who use such forms may incorporate additional columns which would be of use to them, such columns to be placed in such positions as not to interfere with the continuity of the columns and headings prescribed. Such records will not be supplied by the Internal Revenue Service, but must be procured elsewhere.

## § 45.4872-4 Records to be kept in separate books and open for inspection.

(a) *Records.* All records required by the regulations in this subpart shall be kept in separate books, and not mixed with records of other accounts or transactions, and shall be open to inspection, when demand is made therefor by officers and agents of the Internal Revenue Service. All entries therein must be in writing, and the books preserved for a period of not less than three years.

(b) *Inspection by agents.* Agents duly appointed by the Commissioner shall have authority to examine the books and records kept in pursuance to §§ 45.4872-1 to 45.4872-3, inclusive, and may require the production of any other books, papers, records, or statements of account necessary to determine any liability to the tax imposed by section 4851.

## § 45.4872-5 Return to be made by persons dealing in future contracts.

All persons who make contracts of sale of cotton for future delivery at, on, or in any exchange, board of trade, or similar institution or place of business, whether said contracts shall be cleared and adjusted through a clearing association, or direct between the seller and buyer, or otherwise, shall render a return, in letter form, to the district director for the district in which such person's principal place of business is located. The return shall cover the period of one calendar quarter, shall be filed on or before the last day of the first calendar month following the calendar quarter for which it is made, and shall be verified by a written declaration that it is made under the penalties of perjury. The return shall show the number of contracts brought forward from the preceding quarter; the number of contracts bought or sold; the number of bales of cotton involved in said contracts; the month in which said cotton is to be delivered; the method of settlement of said contract—i.e., whether by "ring," "direct," "notice," "actual delivery," "transfer," through a cotton-exchange clearing association, if any, or otherwise; and the number of contracts left open at the end of the quarter.

## § 45.4872-6 Returns to be made by clearing associations.

All persons who act in the capacity of a clearing house, clearing association, or similar institution for the purpose of clearing, settling or adjusting transactions mentioned in section 4851 shall render, in respect of such transactions,

a return, in letter form, to the district director for the district in which such association is located. The return shall cover the period of one calendar quarter, shall be filed on or before the last day of the first calendar month following the quarter for which it is made, and shall be duly verified by the president, vice-president, secretary, or treasurer of the association by a written declaration that it is made under the penalties of perjury. The return shall show all facts in the possession of the association relating to such transactions, including the number of contracts bought or sold by each member of the association; the number of bales involved in said contracts; the month in which said cotton is to be delivered; the number of contracts cleared for each member of the association; the method of settlement of said contracts—i.e., whether by "notice," "set-off," or by any other method; also the monthly average closing price of cotton for each month dealt in, named in said return.

**§ 45.4872-7 Persons failing to make return, district director authorized to do so.**

If any person required to make the return under the provision of section 4872(b) and the regulations in this subpart shall fail or refuse to make said return within the time specified, then the return shall be made by the district director upon inspection of the books and records of the person so required: *Provided*, That the making of the return by the district director shall not be construed to relieve the person so required from any penalty incurred by reason of his failure to make such return.

**§ 45.4873 Statutory provisions; liability of principal for acts of agent.**

SEC. 4873. *Liability of principal for acts of agent.* When construing and enforcing the provisions of this subchapter, the act, omission, or failure of any official, agent, or other person acting for or employed by any association, partnership, or corporation within the scope of his employment or office shall, in every case, also be deemed the act, omission, or failure of such association, partnership, or corporation, as well as that of the person.

[Sec. 4873 as originally enacted and in effect July 1, 1960]

**§ 45.4874 Statutory provisions; immunity of witnesses.**

SEC. 4874. *Immunity of witnesses.* No person whose evidence is deemed material by the officer prosecuting on behalf of the United States in any case brought under any provision of this subchapter shall withhold his testimony because of complicity by him in any violation of this subchapter or of any regulation made pursuant to this subchapter, but any such person called by such officer who testifies in such case shall be exempt from prosecution for any offense to which his testimony relates.

[Sec. 4874 as originally enacted and in effect July 1, 1960]

**§ 45.4875 Statutory provisions; operation of State laws.**

SEC. 4875. *Operation of State laws.* The payment of any tax imposed by this subchapter shall not exempt any person from any penalty or punishment now or hereafter provided by the laws of any State for entering into contracts of sale of cotton for future

delivery, nor shall the payment of any tax imposed by this subchapter be held to prohibit any State or municipality from imposing a tax on the same transaction.

[Sec. 4875 as originally enacted and in effect July 1, 1960]

**§ 45.4876 Statutory provisions; reports of Secretary of Agriculture.**

SEC. 4876. *Reports of Secretary of Agriculture.* The Secretary of Agriculture is directed to publish from time to time the results of investigations made in pursuance of this subchapter.

[Sec. 4876 as originally enacted and in effect July 1, 1960]

**§ 45.4877 Statutory provisions; cross references.**

SEC. 4877. *Cross references.* For penalties and other general and administrative provisions applicable to this subchapter, see subtitle F.

[Sec. 4877 as originally enacted and in effect July 1, 1960]

**§ 45.4877-1 Cross references.**

(a). For penalties for offenses relating to stamps, see § 45.7208.

(b) For penalties for unauthorized use or sale of stamps, see § 45.7209.

(c) For fines for failure to pay, or attempt to evade payment of, tax on cotton futures, and other violations, see § 45.7233.

(d) For penalties relating to cotton futures, see § 45.7263.

(e) For other administrative provisions relating to the tax imposed on cotton futures, see Subpart L.

**Subpart J—Silver Bullion**

**§ 45.4891 Statutory provisions; imposition of tax.**

SEC. 4891. *Imposition of tax.* There shall be imposed on all transfers of any interest in silver bullion, if the price for which such interest is or is to be transferred exceeds the total of the cost thereof and allowed expenses, a tax of 50 percent of the amount of such excess.

[Sec. 4891 as originally enacted and in effect July 1, 1960]

**§ 45.4891-1 Imposition of tax.**

(a) *Transfers subject to tax.* The tax applies to all transfers, within the scope of the tax as set forth in § 45.4896-1, of any interest in silver bullion, if the price for which such interest is or is to be transferred exceeds the cost thereof and the allowed expenses, unless the transfer is specifically exempted. As to exempt transfers, see paragraph (c) of § 45.4896-1.

(b) *Tax in addition to other taxes.* The tax is in addition to all other taxes under the internal revenue laws of the United States.

(c) *Forward sales.* The tax is not payable twice on the same transaction; that is, when the tax is paid upon an agreement to sell, it is not again payable upon the sale, delivery, or transfer in fulfillment thereof.

(d) *Switching transactions.* A transfer of an interest in silver bullion is taxable if a net profit is realized, even though the transferor simultaneously acquires another equivalent interest in silver bullion for the same or a different delivery.

**§ 45.4891-2 Rate and application of tax.**

(a) *Rate of tax.* The tax is 50 percent of the amount by which the price for which the interest in silver bullion is or is to be transferred exceeds the total of the cost thereof plus the allowed expenses. For definition of "cost", see paragraph (a) of § 45.4892-1.

(b) *Price.* The price for which an interest in silver bullion is or is to be transferred is the amount of money and/or the market value of any property other than money received or to be received by the transferor, directly or indirectly, in consideration of the transfer.

(c) *Example.* The following examples illustrate the application of this section:

*Example (1).* A transferred on March 10, 1961, 1,000 ounces of silver to B, who paid \$910; on May 16 B sells 100 ounces to C, who pays \$90. There is no tax. B then sells 500 ounces to D for an article worth \$460. The tax (if any) on this transfer is 50 percent of the amount obtained by subtracting from the sale price (\$460, the value of the article), the sum of the cost (\$455), and the allowed expenses as to the 500 ounces. B then contracts in July to deliver to E in September 400 ounces for which E agrees to pay \$368. E assigns for \$380 to F his rights to receive the silver. This is a transfer of an interest in silver bullion, the cost to the transferor (E) being \$368 and the sale price \$380. The tax on this transfer is 50 percent of the amount by which the sale price to F (\$380), exceeds the sum of the cost to E (\$368), and allowed expenses, if any. Finally B delivers the silver to F. The tax on this transaction (made up of the agreement to sell to E and the delivery to F) is measured by the sale price (\$368) less the aggregate of the cost (\$364) and allowed expenses, if there were any.

*Example (2).* R contracts in June 1961 to deliver to S in September 1,000 ounces of silver at 92 cents an ounce, having previously secured Q's agreement to deliver to him (R) 1,000 ounces in September at 91 cents an ounce. In September R assigns to S the contract of Q which S accepts in fulfillment of R's contract and S pays R \$10 and Q \$910. The assignment to S of the contract between R and Q is a taxable transfer, and the tax is measured by the sale price (\$920) less the cost to R (\$910), and less allowed expenses.

**§ 45.4892 Statutory provisions; definitions.**

SEC. 4892. *Definitions.* For the purpose of this subchapter—

(1) *Cost.* The term "cost" means the cost of the interest in silver bullion to the transferor, except that—

(A) In case of silver bullion produced from materials containing silver which has not previously entered into industrial, commercial, or monetary use, the cost to a transferor who is the producer shall be deemed to be the market price at the time of production determined in accordance with regulations issued hereunder;

(B) In the case of an interest in silver bullion acquired by the transferor otherwise than for valuable consideration, the cost shall be deemed to be the cost thereof to the last previous transferor by whom it was acquired for a valuable consideration; and

(C) In the case of any interest in silver bullion acquired by the transferor in a wash sale, the cost shall be deemed to be the cost to him of the interest transferred by him in such wash sale, but with proper adjustment, in accordance with regulations under this subchapter, when such interests are in silver bullion for delivery at different times.

(2) *Transfer*. The term "transfer" means a sale, agreement of sale, agreement to sell, memorandum of sale or delivery of, or transfer, whether made by assignment in blank or by any delivery, or by any paper or agreement or memorandum or any other evidence of transfer or sale; or means to make a transfer as so defined.

(3) *Interest in silver bullion*. The term "interest in silver bullion" means any title or claim to, or interest in, any silver bullion or contract therefor.

(4) *Allowed expenses*. The term "allowed expenses" means usual and necessary expenses actually incurred in holding, processing, or transporting the interest in silver bullion as to which an interest is transferred (including storage, insurance, and transportation charges but not including interest, taxes, or charges in the nature of overhead), determined in accordance with regulations issued hereunder.

(5) *Memorandum*. The term "memorandum" means a bill, memorandum, agreement, or other evidence of a transfer.

(6) *Wash sale*. The term "wash sale" means a transaction involving the transfer of an interest in silver bullion and, within 30 days before or after such transfer, the acquisition by the same person of an interest in silver bullion. Only so much of the interest so acquired as does not exceed the interest so transferred, and only so much of the interest so transferred as does not exceed the interest so acquired, shall be deemed to be included in the wash sale.

(7) *Silver bullion*. The term "silver bullion" means silver which has been melted, smelted, or refined and is in such state or condition that its value depends primarily upon the silver content and not upon its form.

[Sec. 4892 as originally enacted and in effect July 1, 1960]

#### § 45.4892-1 Definitions.

(a) *Cost*—(1) *In general*. Except as otherwise specifically provided in this paragraph, the cost of an interest in silver bullion is the amount paid or agreed to be paid therefor by the transferor in money and/or the market value of any property other than money exchanged or agreed to be exchanged by him for such interest. In computing such cost, the cost of the particular silver bullion (or interest therein) transferred must be used. When more than one lot of silver bullion is acquired on the same day, however, the cost of all lots of 1,000 ounces each, or less, may be averaged and the average cost applied to such lots. In the event that the transferor elects to take advantage of any provisions permitting the delivery in an exempt transfer (see paragraph (c) of § 45.4896-1) of silver bullion in substitution of other silver bullion eligible for such delivery, the cost of the silver bullion for which the substitution has been made shall be deemed to be the cost of the particular silver bullion so delivered.

(2) *Silver bullion produced from natural silver-bearing materials, etc.* When a producer of silver transfers silver bullion produced by him from materials containing silver which has not prior to the transfer entered into industrial, commercial, or monetary use, the cost to him of such silver bullion shall be deemed to be its market price at the time of production (unless the producer shall have elected otherwise under paragraph (f) of § 45.4894-1). The time of production is the time at which the last usual and

necessary process of smelting or refining prior to transfer is completed; or in the event that silver bullion is delivered pursuant to a forward contract entered into after the silver contained therein was acquired by the transferor but before the completion of the last usual and necessary process of smelting or refining thereof, the time of making of such contract.

(3) *Interest acquired by gift, bequest, etc.* If the transferor acquired the interest in silver bullion otherwise than for valuable consideration, he shall use, as his cost, the cost of the last previous transferor who acquired it for a valuable consideration.

*Example.* If A buys silver bullion at a cost of 90 cents an ounce and gives it to B, and B dies and bequeaths it to C, who in turn transfers it to D for 92 cents an ounce, C's tax will be based on the excess of his selling price (92 cents) over the total of the cost to A (90 cents) plus allowed expenses.

(4) *Forward sales*. In the case of a forward sale, as defined in paragraph (k) of this section, the agreement to sell is a transfer, but the cost of the interest transferred cannot be finally determined until the contract is closed out. If the transferor delivers silver under the contract, the cost to him of the silver delivered shall be used in determining the taxability of the agreement and the amount of the tax. In the case of a "ring" settlement of forward contracts, the cost to the transferor on each contract so settled is deemed to be the price he agreed to pay as transferee in his other contract. Otherwise, (i) when the contract is settled without delivery of silver, upon a payment by the transferee, the transferor shall use as his cost the price on the basis of which settlement is made; and (ii) when the contract is settled upon a payment by the transferor, the contract so settled is not itself subject to tax, but the settlement is a transfer subject to tax measured by the amount so paid. In the latter case the original transferee becomes the transferor of an interest in silver bullion.

(b) *Transfer*. The term "transfer" means any sale, agreement of sale, agreement to sell, memorandum of sale or delivery of, or transfer of an interest in silver bullion whether made by assignment in blank or by any delivery, or by any paper or agreement or memorandum or any other evidence of transfer or sale, or means to make such transfer. For regulations with respect to the types of transfers of interest in silver bullion which are subject to tax, see § 45.4896-1.

(c) *Interest in silver bullion*. The term "interest in silver bullion" means any title or claim to, or interest in, any silver bullion or contract therefor.

(d) *Allowed expenses*. In determining the tax, the transferor may add to his cost any usual and necessary expense, such as storage, insurance, and transportation charges, actually incurred in holding, processing or transporting silver bullion with respect to which an interest is transferred. Interest, taxes, and charges in the nature of overhead may not be included in the allowed expenses. In the case of silver bullion

produced from materials containing silver which has not previously entered into industrial, commercial, or monetary use, the producer-transferor may include in allowed expenses only expenses actually incurred subsequent to the last usual and necessary process of smelting or refining of the particular silver bullion transferred. If the cost to the transferor is deemed to be the cost to a previous transferor (see paragraph (a) (3) of this section), the allowed expenses may include those incurred with respect to the silver bullion or interest therein in question since the acquisition by such previous transferor. The allowed expenses may in no case be estimated, but must be subject to definite proof as expenses actually incurred.

(e) *Memorandum*. The term "memorandum" means a bill, memorandum, agreement, or other evidence of a transfer of an interest in silver bullion. (See § 45.4895-5.)

(f) *Silver bullion*. Ores, concentrates, and the like, containing silver which has not been melted, smelted, or refined are not silver bullion, whatever their silver content. Material containing silver which has been melted, smelted, or refined, and of which the silver content is not less than 250 troy ounces of fine silver per short ton is silver bullion. Thus, bar silver or crystal silver is silver bullion; as also, is the silver contained in dore, zinc crust, slimes, lead bullion, blister copper, etc., except that materials containing less than 250 troy ounces of fine silver per short ton are not silver bullion. Fabricated silver (defined in paragraph (g) of this section) of which not more than 80 percent of the total value is attributable to the silver content is not silver bullion. Fabricated silver in a form customarily sold for industrial, professional, or artistic use at a stated premium per fine troy ounce above the current market value of commercial bar silver, is not silver bullion, if the current market premium with respect to such fabricated silver is 12 cents or more. Scrap silver is silver bullion.

(g) *Fabricated silver*. The term "fabricated silver" means silver which has in good faith and not for the purpose of evading, or enabling others to evade the tax, been processed or manufactured into such a form that it has one or more specific and customary industrial, professional, or artistic uses.

(h) *Scrap silver*. The term "scrap silver" includes silver sweepings, and fabricated silver or silver coin which is no longer held for the purpose for which it was processed, manufactured, or coined.

(i) *Resident*. The term "resident" includes a domestic corporation or partnership.

(j) *Party to the transfer*. The term "party to the transfer" includes any person who by the transfer disposes of or acquires any ownership or interest in or claim to the interest in silver bullion transferred.

(k) *Forward sale*. The term "forward sale" means a so-called "over-the-counter contract", or a contract to sell silver bullion for spot or future delivery.

(l) *Silver foreign exchange*. The term "silver foreign exchange" means foreign

exchange the fluctuations of which follow generally the fluctuations in the price of silver.

#### § 45.4892-2 Expired provisions.

Subparagraph (c) of paragraph (1) and paragraph (6) of section 4892, relating to wash sales, have no application to years as to which the Internal Revenue Code of 1954 is effective.

#### § 45.4893 Statutory provisions; liability for tax.

SEC. 4893. *Liability for tax.* This tax imposed by this subchapter shall be paid by any person who makes, signs, issues, or sells any of the documents and instruments subject to the tax imposed by this subchapter, or for whose use or benefit the same are made, signed, issued, or sold. The United States or any agency or instrumentality thereof shall not be liable for the tax with respect to an instrument to which it is a party, and affixing of stamps thereby shall not be deemed payment for the tax, which may be collected by assessment from any other party liable therefor.

[Sec. 4893 as originally enacted and in effect July 1, 1960]

#### § 45.4893-1 Liability for the tax.

(a) *In general.* Except as provided in paragraphs (b) and (c) of this section, both parties to a transfer are responsible for affixing stamps in the required amount in payment of the tax imposed by section 4891. Stamps shall be affixed in accordance with the provisions of § 45.4895-1. In the case of a transfer upon which the transferor claims that no tax is due, he may affix a stamp of 1 cent in order to submit the same for cancellation. If, at any time before the expiration of the period of limitation, tax is found to be due on a transfer on which no tax was paid, or if additional tax is found to be due on a transfer, assessment may be made against either the transferor or the transferee, except as provided in paragraphs (b) and (c) of this section.

(b) *After cancellation of stamps.* When stamps on any memorandum have been cancelled as provided in § 45.4895-6, the transferor and not the transferee shall be liable for any additional tax found due or for any penalty with respect to the transfer in question.

(c) *Transfers to the United States Government.* In the case of taxable transfers to the United States Government, the transferor is liable for the tax, which shall be paid in accordance with the provisions of section 4895 and the regulations thereunder. For transfers exempt from the tax, see paragraph (c) of § 45.4896-1.

(d) *Liability of agent or broker.* An agent or broker acting for a party to a transfer is subject to penalties under section 7201 for delivering any silver bullion or interest therein without the required memorandum, or for delivering any such memorandum without having the proper stamps affixed thereto, with the intent to evade or assist in the evasion of the requirements of the law.

#### § 45.4894 Statutory provisions; abatement or refund.

SEC. 4894. *Abatement or refund.* The Secretary or his delegate shall abate or refund, in accordance with regulations issued

under this subchapter, such portion of any tax imposed by section 4891 as he finds to be attributable to profits—

(1) *Course of regular business.* Realized in the course of the transferor's regular business of furnishing silver bullion for industrial, professional, or artistic use and—

(A) Not resulting from a change in the market price of silver bullion, or

(B) Offset by contemporaneous losses incurred in transactions in interests in silver bullion determined, in accordance with such regulations, to have been specifically related hedging transactions; or

(2) *Silver foreign exchange.* Offset by contemporaneous losses attributable to changes in the market price of silver bullion and incurred in transactions in silver foreign exchange determined, in accordance with such regulations, to have been hedged specifically by the interest in silver bullion transferred.

[Sec. 4894 as originally enacted and in effect July 1, 1960]

#### § 45.4894-1 Abatement or refund of tax attributable to profits realized in course of regular business.

(a) *Transferors engaged in business of furnishing silver bullion for industrial, professional, or artistic use—*(1) *General.* Section 4894 provides for the abatement or refund of so much of the tax imposed by section 4891 as is found by the district director to be attributable to profits realized in the course of the transferor's regular business of furnishing silver bullion for industrial, professional, or artistic use, to the extent that such profits (i) do not result from changes in the market price of silver bullion or (ii) are offset by contemporaneous losses incurred in transactions in interests in silver bullion determined in accordance with the regulations in this part to be specifically related hedging transactions.

(2) *Registration requirement.* The abatement or refund provided in subparagraph (1) of this paragraph is available only to a transferor regularly engaged in the business of furnishing silver bullion for industrial, professional, or artistic use who has obtained from the district director a certificate of registration on Form 1A (Silver), and with respect to transactions in the regular course of that business. The district director shall issue such certificate upon application on Form 1 (Silver) if satisfied that the applicant is regularly engaged in the business specified. The provision for abatement or refund does not apply to transfers by a person not registered and regularly engaged in the business specified, regardless of the purpose for which the silver bullion so transferred is to be used. Abatement or refund under subdivisions (i) and (ii) of subparagraph (1) of this paragraph may be allowed with respect to the same transfer.

(b) *Profits not resulting from change in market price.* The amount of profit not resulting from a change in the market price of silver bullion shall be determined by subtracting from the net profit the amount attributable to a change in the market price of silver bullion. For purposes of this subpart, the term "net profit" means gross profit less the allowed expenses. ("Allowed expenses" are deemed to be incurred in the

course of the transferor's regular business.)

(c) *Profits attributable to change in market price.* The amount of profit attributable to a change in the market price of silver bullion means the rise, if any, in the market price of an interest in silver bullion equivalent to the interest transferred, during the time the interest was held by the transferor. The interest shall be deemed to have been held by the transferor from the date of its acquisition (or of a prior contract for its acquisition) to the date of the taxable transfer. The market price as of each such date shall be deemed to be the market price on that date of a similar interest in silver bullion for delivery on the date specified in the contract of acquisition or the taxable transfer, as the case may be. In all cases market prices shall be determined in accordance with the prices in the nearest established exchange upon which interests in silver bullion are dealt in, and the same exchange shall be used in determining price as of both dates. In the absence of transactions in an established exchange, the market quotations published in the Mining and Engineering Journal, a trade journal published in New York City, may be used in determining price. In the case of any transfer of an interest in silver bullion in a form other than that in which it is dealt in upon an established exchange the market value shall be determined on the basis of the silver content of such silver bullion. When the cost to a producer-transferor is determined under paragraph (a) (2) of § 45.4892-1, the time of production shall be deemed to be the date of acquisition for purposes of this section.

(d) *Profits offset by losses on hedging transactions.* Specifically related hedging transactions are two or more transactions entered into by the same person, at least one of which has been entered into by him for the purpose of offsetting in whole or in part, the profit or loss which would accrue to him upon the other transaction or transactions as a direct result of any change in the market price of silver bullion. To the extent that a net profit realized upon one or more of a group of specifically related hedging transactions, is offset by a contemporaneous loss upon any one or more of the other specifically related transactions, a transferor registered in accordance with subparagraph (2) of paragraph (a) of this section is entitled to abatement or refund of the tax on such profit; provided that the transfers which constituted the hedge transactions are specifically related to one or more transfers made in the course of the transferor's regular business of furnishing silver bullion for industrial, professional, or artistic use.

(e) *When profits and losses are contemporaneous.* The requirement that the profit and loss, respectively, upon specifically related hedging transactions must be incurred contemporaneously, means that the time between the realization of the profit and the loss must be as brief as is reasonably practicable under the circumstances. For the purpose of this requirement, a profit or loss may, in a proper case, be deemed to be incurred

at the time the contract is made although pursuant to paragraph (a) (4) of § 45.4892-1 the profit may not be ascertainable or the tax payable until the contract is closed out.

(f) *Hedges against sales from necessary inventory*—(1) *Election in case of changes in necessary inventory.* In the case of transfers of any interest in silver bullion made in the course of the transferor's regular business of smelting or refining silver or of furnishing silver bullion for industrial, professional, or artistic use, the transferor may elect (in the manner provided in subparagraph (2) of this paragraph) to have:

(i) The cost of the interest in silver bullion transferred; and

(ii) The amount of contemporaneous losses incurred in specifically related hedging transactions involving acquisitions to be added to inventory

determined in accordance with this paragraph, and such election shall constitute as to the transfers to which subparagraph (4) of this paragraph applies a waiver of any and all rights to have such cost and the amount of such losses determined in any other manner.

(2) *Manner of making election*—(i) *In general.* Any person eligible for, and desiring to obtain, the benefits of this paragraph, shall file with the district director, in accordance with the provisions of § 45.6091-2, an application on Form 6 (Silver). The district director shall, if satisfied that the applicant is qualified, thereupon issue a certificate on Form 7 (Silver) setting forth the findings of the district director as to the applicant's business, the amount of his necessary inventory, and the average of the cost thereof determined in accordance with paragraph (a) of § 45.4892-1, and such certificate shall fix, until amended by a subsequent certificate, the amount of such inventory and the average cost thereof. The applicant may, within 7 days of the issuance of such certificate, file with the district director an agreement on Form 8 (Silver) which shall constitute the election above referred to. Failure to file the agreement (Form 8 (Silver)) in proper form within the required 7-day period (unless the district director extends the period) shall constitute an election not to obtain the benefits of this paragraph, without prejudice to the right to file application at any time after 30 days.

(ii) *Manner of amending certificate.* If the taxpayer at any time shows to the satisfaction of the district director that changes in his business have caused a change in the amount of his necessary inventory, he may make application for the issuance of an amended certificate and may specify the date as of which he desires the amendment to be effective. An amendment made under the provisions of this subdivision may be retroactive in a proper case. If satisfied that the taxpayer is entitled to the amendment, the district director shall issue an amended certificate on Form 7 (Silver), which shall become effective if the taxpayer files a new agreement on Form 8 (Silver). In case of an increase of necessary inventory the cost per ounce of the necessary inventory as so increased shall

be computed as the weighted average of the cost per ounce of the necessary inventory previously fixed and the cost per ounce of the actual silver added thereto. In case of a decrease of necessary inventory the cost per ounce shall not be affected thereby.

(iii) *Effect of delivery to United States mint.* In case a transferor delivers to a United States mint in an exempt transfer pursuant to any Executive order (see paragraph (c) of § 45.4896-1) any silver forming a part of the transferor's necessary inventory, the transferor, after replacing the silver so transferred by other silver not required to be delivered to a United States mint, may make application for the issuance of an amended certificate on Form 7 (Silver) in which the average cost of the necessary inventory shall be the weighted average of (a) the cost of silver in his necessary inventory not so delivered, and (b) the actual cost of the silver acquired to replace silver in his necessary inventory so delivered to a United States mint.

(3) *Definitions applicable to this paragraph.* As used in this paragraph the term "necessary inventory" means the amount of the necessary inventory stated in the certificate issued under subparagraph (2) of this paragraph; the term "average cost of the necessary inventory" means the average of the cost of the silver in the necessary inventory as stated in the certificate issued under subparagraph (2) of this paragraph; and the term "replacement silver" means silver taken into the necessary inventory to replace silver transferred therefrom, provided the replacement takes place within 45 days before or after such transfer.

(4) *Special rules applicable to this paragraph*—(i) *Basis of cost.* Upon every transfer by a transferor who holds a certificate on Form 7 (Silver) and has filed an agreement on Form 8 (Silver), the cost shall be based upon the average cost of the necessary inventory, except that if replacement silver to replace the interest so transferred is acquired at a cost less than the average cost of the necessary inventory, the actual cost of such replacement silver shall be used as the cost of the interest so transferred.

(ii) *Determination of transfer.* In determining which transfers are transfers from necessary inventory (so as to enable the transferor to claim the benefit of any offsetting loss on replacement silver acquired within 45 days before or after such transfer), due regard shall be given, whenever the transferor's actual inventory exceeds his necessary inventory, to the amount of such excess and the period of its continuance, in relation to the reasonable requirements of his business. The burden shall be upon the transferor to justify any such excess continuously maintained for a period of more than 45 days.

(5) *Computation of cost of replacement silver.* The cost of replacement silver shall be the actual purchase price paid to the vendor, plus allowed expenses, or in the case of replacement silver taken from mines owned by the transferor, the cost shall be the market price of silver at the time of mining. The loss incurred on replacement silver

may be offset against any profits resulting from transfers from necessary inventory. Such loss shall be determined by deducting from the cost of the replacement silver the cost, as computed under subparagraph (4) of this paragraph, of the interest transferred from necessary inventory. In lieu of adding allowed expenses to the cost of replacement silver, the transferor may add to the cost the toll or similar charges deducted from a purchase price, based upon the market, in which case he shall not be entitled to abatement attributable (under paragraph (b) of this section) to profits taken into account in such charges.

(6) *Rules applicable to smelter and refiner of silver.* A transferor regularly engaged in the business of smelting and refining silver, in determining the amount of replacement silver and the time of acquisition thereof, may use such estimated figures as are regularly employed by him in preserving in good faith and as nearly as may be practicable a constant inventory. He may use as the cost of replacement silver, where the cost cannot practically be determined in any other manner, the market price thereof at the time of acquisition; in which case no allowed expenses and no abatement on account of nonmarket profits (under paragraph (b) of this section) shall be claimed for any period prior to the completion of the processing of such silver. Any upward revision of such an estimate of the amount of replacement silver acquired, on the basis of which the transferor's selling policy is correspondingly revised, shall be deemed an acquisition of further replacement silver and the amount and cost thereof shall be determined as of the date of the revision; and any such downward revision shall constitute a shortage of replacement silver until the amount, in fine troy ounces, of the shortage has been made good. All data upon which the estimates and revisions provided in this subparagraph are based shall be considered records of the taxpayer within the meaning of § 45.4895-8.

(7) *Rules applicable to foreign corporate subsidiary or affiliate.* Silver owned by a foreign corporation subsidiary to or affiliated with the taxpayer may at the option of the taxpayer (with the written consent of such foreign corporation) be included in the inventory of the taxpayer; in which case all transfers by such foreign corporation shall be deemed to be transfers by the taxpayer, and as such shall be taxable to the taxpayer, and replacement silver acquired by such foreign corporation shall be included as replacement silver acquired by the taxpayer, but transfers as between the corporations shall not be deemed to be transfers of interests in silver bullion, within the meaning of § 45.4892 and paragraph (b) of § 45.4892-1; and the silver so transferred shall be deemed to have been acquired by the transferee otherwise than for a valuable consideration, within the meaning of paragraph (a) (3) of § 45.4892-1. The election to include a foreign corporate subsidiary or affiliate may be revoked by an instrument in writing signed by the taxpayer and by such foreign corporation and filed with

the district director, in accordance with the provisions of § 45.6091-2, and shall be effective as of the close of the calendar month in which it is filed. Any silver acquired by such foreign corporation after the effective date of the revocation provided in the preceding sentence shall not be deemed to be replacement silver. If, on the effective date of the revocation, the amount of silver owned by such foreign corporation which formed a part of the necessary inventory, does not exceed the amount so owned by it at the time of the election to include such foreign corporation, transfers by the foreign corporation after such revocation are taxable only in accordance with §§ 45.4891-1 and 45.4896-1; and if it does not exceed the amount so owned by it at the time of the election to include the foreign corporation, the next succeeding transfers aggregating the amount of such excess shall be deemed to be transfers from the inventory of the taxpayer and as such shall be taxable to the taxpayer. In determining such amounts, transfers between the taxpayer and the foreign corporate subsidiary or affiliate, whether for spot or future delivery, shall be considered as transfers, but the cost of silver so transferred shall be determined in accordance with paragraph (a) of § 45.4892-1.

**§ 45.4894-2 Abatement or refund of tax attributable to profits realized in connection with transactions in silver foreign exchange.**

(a) *Hedging transactions in silver foreign exchange*—(1) *In general.* Claim for abatement or refund may be made of so much of the tax imposed by section 4891 as is offset by a contemporaneous loss (i) attributable to a change in the market price of silver bullion and (ii) incurred in a transaction in silver foreign exchange specifically hedged by the interest in silver bullion transferred. See paragraph (1) of § 45.4892-1 for definition of silver foreign exchange.

(2) *Rules applicable*—(i) *When profit and loss are contemporaneous.* The requirement that the profit upon the transfer of an interest in silver bullion must be contemporaneous with the loss upon the silver foreign exchange contract means that the time between the realization of the profit and the loss must be as brief as is reasonably practicable under the circumstances.

(ii) *When interest in silver bullion is a hedge.* A transaction in silver foreign exchange is deemed to have been hedged by an interest in silver bullion when such interest is involved in the fulfillment or liquidation of a contract to sell or purchase silver bullion which contract was entered into for the purpose of offsetting, in whole or in part, the profit or loss which would accrue to the same person on the transaction in silver foreign exchange as a direct result of any change in the market price of silver foreign exchange.

(iii) *Grouping transactions in one operation.* Two or more transactions in silver foreign exchange may be grouped, and two or more transfers of interests in silver bullion may be grouped, when they can be shown to have formed a part of a single hedging operation.

(b) *Elective procedure in case of interrelated hedging operations*—(1) *Application of subparagraph.* The provisions of this subparagraph shall apply to a taxpayer who shall have so elected, as provided in this paragraph, and who, in the regular course of his business, enters into a substantial number of transactions in silver foreign exchange for his own account and as a hedge, from time to time, against his position in such silver foreign exchange buys and sells interest in silver bullion. The making of such election shall constitute an agreement to the determination of the tax upon the profits of such business in accordance with the provisions of this subparagraph and a waiver of any claim to have such tax determined in any other manner. If a taxpayer engages in such business and also in other business involving the purchase and sale of interests in silver bullion not incident to his hedging operations, he shall be entitled to the benefits of this paragraph only upon showing to the satisfaction of the district director that his hedging transactions in interests in silver bullion are so far segregated from his other transactions in such interests, that a separate return can be made with respect to such hedging transactions as hereinafter provided in this paragraph, and that any profits or transactions in interests in silver bullion not a part of such hedging transactions and not incidental thereto, will not be included in such return, but will be taxed under the other provisions of this subpart. In case of such segregation the taxpayer, by making the election under this subparagraph, agrees that any transfer of an interest in silver bullion from one account to the other shall be made at the market price for a similar interest as of the date of such transfer, and shall be treated as though a similar interest had been sold in the open market from one account and a similar interest simultaneously purchased in the open market for the other account.

(2) *Manner of making election.* The election provided in this paragraph shall be made by filing with the district director, in accordance with the provisions of § 45.6091-2, an application on Form 9 (Silver). The district director may require such further proof, in the form of affidavits or otherwise, as he deems necessary. If satisfied that the applicant is entitled to the benefits of this subparagraph the district director shall issue to him a certificate on Form 10 (Silver).

(3) *Election may be revoked.* The election by the taxpayer may be revoked as of the close of any calendar month upon giving to the district director issuing the certificate on Form 10 (Silver) 60 days' written notice of intention to revoke. The certificate may be revoked by the district director upon written notice to the taxpayer and opportunity to be heard. Among other causes, the certificate may be revoked for failure to comply with the regulations in this subpart.

(4) *Memorandum to be filed in case of election.* Upon any transfer of an interest in silver bullion by a taxpayer holding a certificate on Form 10 (Silver),

which transfer constitutes a part of his hedging operations or transactions incidental thereto, he shall deliver a memorandum in accordance with § 45.4895-5 (omitting, however, any statement of the cost of the interest transferred, and any computation of tax) and shall state thereon, as a claim for abatement of the entire amount of the tax which would otherwise be payable, the fact that he holds such certificate and that the transfer constitutes a part of his hedging operations. No claim for abatement on Form 843 (Silver) need be attached. If satisfied that the statements are true, the district director shall proceed in accordance with § 45.4895-6. Upon cancellation of a 1-cent stamp, if any (see § 45.4895-1), the transferee is relieved of liability for any tax subsequently found due, but the transferor remains liable for the tax computed as herein-after provided.

(5) *Burden of proof.* The burden shall be upon the taxpayer to show, with respect to any transfer of an interest in silver bullion, that the transfer constituted a part of a hedging operation against transactions in silver foreign exchange or constituted a transaction properly incidental thereto. In determining what transactions in interests in silver bullion are hedges against transactions in silver foreign exchange or transactions incidental thereto, the taxpayer shall include only transactions within the following tolerances: The excess of the total long or short position in interests in silver bullion and in silver foreign exchange over the total short or long position shall not, for a period of more than two consecutive business days, be consistently greater than 20 percent of the lesser total, nor for any period of more than 7 consecutive business days consistently greater than 5 percent, nor for any period of a calendar month consistently greater than 1 percent. In determining the excesses set forth in the preceding sentence, the taxpayer shall apply to each silver foreign exchange the ratio to silver bullion which is customarily applied in hedging operations against such silver foreign exchange. A taxpayer who is unable to determine his actual position, by reason of unavoidable delay in reporting transactions by branch offices or agents, shall be deemed to comply with the foregoing tolerances if his estimated position complies therewith, based on his usual volume of unreported transactions. To the extent that a taxpayer may fail to comply with either of the requirements of this subparagraph, he shall not be entitled to the benefits of this subparagraph or to abatement under this section with respect to transfers of interests in silver bullion.

(6) *Monthly return required.* A taxpayer who has been furnished a certificate on Form 10 (Silver) entitling him to the benefits of this paragraph shall file a return on Form 11 (Silver) for each calendar month, including therein all transactions in interests in silver bullion during the month constituting a part of his hedging operations or transactions incidental thereto. Such returns shall be filed with the district director, in accordance with the provisions of § 45.-

6091-2, on or before the 15th day of the succeeding calendar month, except that a return filed by a taxpayer's branch office in a foreign country shall be filed on or before the 15th day of the second succeeding month. The total tax shown on the return shall be paid to the district director at the time the return is filed.

(7) *Records to be kept.* The taxpayer shall keep the records required by § 45.4895-8, and shall also retain and make available for inspection for a like period of time records of all transactions in silver foreign exchange.

(8) *Conditions for filing Form 11A (Silver).* A taxpayer may treat a part only of his transactions in silver foreign exchange as hedged by his transactions in interests in silver bullion; in which event such part only of his transactions in silver foreign exchange shall be included in the schedules on Form 11A (Silver). The taxpayer shall execute an affidavit on the same day on which any interest in silver bullion is either purchased or sold or on the succeeding day. Such affidavit shall refer to such purchase or sale, stating that it is executed on the same or succeeding day, and shall describe the transactions in silver bullion thereby hedged with sufficient precision to avoid the possibility of later substitution. The affidavit shall be annexed to the return (Form 11 (Silver)) for the month in which the purchase or sale was made.

(9) *Exception on account of foreign branch offices.* A taxpayer having branch offices in foreign countries may exclude from his return on Form 11 (Silver) transactions in interests in silver bullion effected by or for the account of such branch offices: *Provided*, That he designates the branch offices concerned; and *Provided*, That the accounts of each such branch office be kept entirely separate; and *Provided*, That each transfer of an interest in silver bullion by such branch office either be reported by a separate memorandum pursuant to § 45.4895-5, or be included in a return to be filed by any such branch office pursuant to this paragraph. The taxpayer, in designating the branch offices concerned, shall specify which method is to be followed. Such designation and such specification may be changed as of the close of any month.

(10) *Computation of the tax.* The tax shall be computed as follows:

(i) The cost of a net long position or the price of a net short position in interests in silver bullion as of the opening of the month shall be the total cost or the total price (less allowed expenses), as the case may be, of the most recent purchases or sales of interests in silver bullion aggregating in the troy ounces the amount of such net position. Allowed expenses incurred prior to the effective date of the taxpayer's election under this paragraph, in connection with interests in silver bullion constituting his net long position, if any, on such effective date, may be added to the cost thereof.

(ii) All purchases of interests in silver bullion during the month shall be reported, together with the aggregate cost thereof; and there shall be added thereto the net long position at the opening of

the month, if any, at the cost thereof. All transfers of such interests during the month shall be reported, together with the aggregate price received therefor (less allowed expenses); and there shall be added thereto the net short position at the opening of the month, if any, at the price thereof.

(iii) To the extent of the smaller of the two aggregates in subdivision (ii) of this subparagraph, determined in fine troy ounces, all transactions shall be deemed to be transactions completed within the month, and the opening net position shall be deemed to have been liquidated during the month, and profit or loss thereon shall be deemed to have been realized during the month. To the extent that one of such aggregates exceeds the other, such excess shall constitute the net long or short position, as the case may be, at the close of the month; and the cost or price thereof shall be determined in accordance with subdivision (i) of this subparagraph.

(iv) The cost or price of such net closing position shall be deducted from the aggregate cost or price specified in subdivision (ii) of this subparagraph and the balance shall be treated as the cost or price of the purchases or sales completed during the month. After making such deduction, the excess of the aggregate price, if any, over the aggregate cost, is the profit for the month on transactions in interests in silver bullion; and, except as offset by losses in transactions in silver foreign exchange, or by aggregate net losses carried forward from previous months, as hereinafter provided, is subject to tax at the rate of 50 percent.

(v) A purchase or sale for future delivery shall be included as a transaction effected in the month when the contract for such delivery is made. The cost or price thereof is the contract price, without adjustment for any difference in market price between spot and future silver.

(vi) Allowed expenses shall be reported for the month during which payments are actually made, and shall be deducted from the aggregate selling price for that month.

(vii) In case the taxpayer has positions in interests in silver bullion in more than one market during the month, the cost or price of his opening net positions may be determined separately, and separate schedules attached to the return for the transactions during the month in the various markets, and the net profit or loss on all such schedules shown as the net profit or loss for the month on transactions in interests in silver bullion.

(viii) There shall be attached to the return a separate schedule on Form 11A (Silver) for each silver foreign exchange (see paragraph (1) of § 45.4892-1 for definition) in which the taxpayer had a position at any time during the month. The net profit or loss, and the cost or price of the net position at the opening and at the close of the month shall be computed for each such exchange in the same manner as in the case of interests in silver bullion, except that no allowed expenses shall be included.

(ix) The aggregate net profit or loss for the month is the difference between the total of the net profits and the total

of the net losses shown on the return and on the annexed schedules.

(x) An aggregate net loss for the month may be carried forward and applied against an aggregate net profit for the succeeding month, and any amount thereof not so applied may be applied against an aggregate net profit for the second succeeding month. No aggregate net loss for a month shall be carried forward more than 2 months.

(xi) The taxable profit for the month is the aggregate net profit minus any aggregate net loss carried forward from either or both of the 2 preceding months in accordance with subdivision (x) of this subparagraph; or the profit for the month on transactions in interests in silver bullion, whichever is less.

#### § 45.4894-3 Procedure; abatement of tax paid by stamps on memorandum.

(a) *Preparation of Form 843 (Silver).* When the tax on any transfer paid by stamps affixed to the memorandum required by § 45.4895-5 is subject to abatement or refund under section 4894 and this subpart, a claim for abatement on Form 843 (Silver) may be prepared in duplicate, in accordance with § 45.4894-7. The original of the claim (Form 843 (Silver)) shall be attached to the duplicate of the memorandum and filed with the district director, in accordance with the provisions of § 45.6091-2. The duplicate shall be attached to the stamped memorandum and the procedure outlined in §§ 45.4895 and 45.4896 shall be observed.

(b) *Marking and stamping memorandum in case of claim.* The memorandum shall be marked "claim in abatement filed herewith" and shall show the amount of tax abatement of which is claimed. Stamps need be affixed only for the balance of the tax, but if the district director has any reason to doubt the correctness of the claim for abatement, he may refuse to cancel the stamps until he is satisfied of the correctness of the claim or until the necessary additional stamps are affixed. The burden of proof is upon the person making the claim to establish definitely every fact upon which it depends.

#### § 45.4894-4 Procedure; abatement of tax shown on return.

When all or any part of the tax shown on any return required by the provisions of § 45.4895-7 is subject to abatement or refund under section 4894 and this subpart, there may be filed with the return a claim for abatement on Form 843 (Silver) for each such transfer. Such form shall be filed in duplicate and the form of the procedure set forth in § 45.4894-3 shall be observed. The amount of the tax abatement of which is claimed shall be deducted from the total tax shown on the return, and payment of the balance, if any, shall be made in accordance with § 45.4895-7.

#### § 45.4894-5 Disallowance of claim.

If any claim for abatement is disallowed, in whole or in part, the additional tax found due must be paid. The transferee is not liable for additional tax on transfers with respect to which stamps have been canceled.

**§ 45.4894-6 Claim for refund.**

When tax which has been paid on any transfer is subject to refund under section 4894 and this subpart, a claim for refund in duplicate, on Form 843, may be filed by the person who paid the tax. The claim shall be filed with the district director who canceled the stamps, or to whom the tax was paid. The claim must be filed within 3 years from the date of payment of the tax.

**§ 45.4894-7 Form of claim.**

Each claim must be made on the prescribed form and must state in detail all the facts necessary to establish its correctness. Each claim must contain a written declaration that it is made under the penalties of perjury. (See §§ 45.6065 and 45.6065-1.)

**§ 45.4895 Statutory provisions; stamps, memorandum, etc.**

Sec. 4895. *Stamps*—(a) *Affixing of stamps*. On every transfer subject to the tax imposed by section 4891, there shall be made and delivered by the transferor to the transferee a memorandum to which there shall be affixed lawful stamps in value equal to the tax thereon.

(b) *Memorandum*. Every such memorandum shall show the date thereof, the names and addresses of the transferor and transferee, the interest in silver bullion to which it refers, the price for which such interest is or is to be transferred, and the cost, thereof and the allowed expenses.

(c) *Cancellation of stamps*. Stamps affixed under this section shall be canceled (in lieu of the manner provided in subtitle F) by such officers and in such manner as regulations under this subchapter shall prescribe. Such officers shall cancel such stamps only if it appears that the proper tax is being paid, and, when stamps with respect to any transfer are so canceled, the transferor and not the transferee shall be liable for any additional tax found due or penalty with respect to such transfer.

[Sec. 4895 as originally enacted and in effect July 1, 1960]

**§ 45.4895-1 Affixing of stamps.**

If a transfer, described in paragraph (a) of § 45.4891-1, evidenced by a memorandum as described in § 45.4895-5 or shown on a return as provided by § 45.4895-7, is taxable, stamps in value equal to the amount of the tax shall be affixed to the original of the memorandum or return before delivery to the transferee, except as provided in § 45.4895-6. If no tax is due, a one-cent stamp may be affixed for the purpose of obtaining a cancellation for the protection of the transferee. The person affixing the stamps shall immediately write or stamp in ink on the stamps, or perforate them, to show his initials and the day, month, and year on which affixed.

**§ 45.4895-2 Silver tax stamps issued.**

Under authority conferred upon the Secretary or his delegate in section 6801 the following adhesive stamps have been prepared:

Documentary stamps, overprinted by the Government with the words "Silver tax"; 1 cent, 2 cents, 3 cents, 4 cents, 5 cents, 8 cents, 10 cents, 20 cents, 25 cents, 40 cents, 50 cents, 80 cents, \$1, \$2, \$3, \$4, \$5, \$10, \$20, \$30, \$50, \$60, \$100, \$500, \$1,000.

**§ 45.4895-3 Where stamps may be purchased and where requisition forms for the purchase of stamps may be obtained.**

(a) *Where stamps may be purchased*. Silver tax stamps for use in payment of the tax imposed by section 4891 may be purchased from district directors of internal revenue.

(b) *Requisitions*. Requisitions for the purchase of such stamps shall be made on Form 9 (Silver). Copies of the form may be obtained from any district director.

**§ 45.4895-4 Use of stamps.**

Whenever feasible the tax imposed by section 4891 shall be paid by the use of a single stamp. If a stamp of the proper denomination to pay the tax due on a transfer is not readily available, the smallest practical number of stamps shall be used. A stamp affixed to an instrument cannot lawfully be removed therefrom and affixed to another instrument requiring a stamp (see section 7208 (§ 45.7208), relating to penalties). Ordinary postage stamps will not be accepted for the payment of this or any internal revenue tax.

**§ 45.4895-5 Memorandum of transfer.**

(a) *Data to be supplied in memorandum*. On every transfer of an interest in silver bullion, whether or not subject to tax, the transferor shall, except as provided in paragraph (c) of this section and § 45.4895-7, deliver to the transferee a memorandum on Form 2 (Silver), in duplicate, showing:

(1) The date of the memorandum and the date of the transfer covered thereby.

(2) The name and address of the transferor.

(3) The name and address of the transferee.

(4) The interest in silver bullion which is or is to be transferred.

(5) The date and manner of acquisition (or production when that is the basic date).

(6) The price for which such interest is or is to be transferred.

(7) The cost of such interest. The facts upon which the cost is based shall be stated in detail.

(8) The allowed expenses, if any, itemized.

(b) *Verification*. For rules relating to verification of documents generally, see §§ 45.6065 and 45.6065-1.

(c) *Exceptions*. (1) No memorandum of transfer is required when scrap silver is transferred, in lots not exceeding in the aggregate 300 fine troy ounces within any 10-day period, to any registered jeweler, silversmith, refiner, or other person regularly engaged in the business of furnishing silver for industrial, professional or artistic use.

(2) No memorandum of transfer is required from a transfer of material which was not considered to be silver bullion by reason of its processed form and/or silver content when originally purchased by such transferor for use, when and if he returns such material in whole or in part to any registered dealer or refiner regularly engaged in the business of furnishing silver for industrial, professional,

or artistic use, for credit or for the purpose of refining or reprocessing, provided the refining or reprocessing charge is equal to or in excess of the rise, if any, in the market price of silver bullion during the time the material was held, and further provided, the material returned in accordance with the provisions of this subparagraph is identified as the same material in whole or in part as the material originally purchased.

(d) *Delivery of memorandum to the district director*. (1) Except as provided in subparagraph (2) of this paragraph, the memorandum, in duplicate, shall be delivered to the district director within 30 days from the date of the transfer. The 30-day period runs from the date on which the agreement to sell is made. In the case of a forward sale the memorandum shall be delivered to the district director within 30 days from the date of delivery of the interest in fulfillment thereof. If a forward contract is settled without delivery of the interest, the memorandum shall be delivered within 30 days from such settlement.

(2) In the case of transfers outside of the United States, the memorandum, in duplicate, together with the amount of the tax, shall be mailed within the applicable 30-day period to the district director, for the affixing and cancellation of stamps.

(3) For regulations relating to the place for filing the memorandum, see § 45.6091-2.

**§ 45.4895-6 Action of district director; cancellation of stamps.**

(a) *Method of cancellation*. Upon receipt of the memorandum in duplicate, if no stamps are affixed, the district director shall, if satisfied that no tax is due, write or stamp on the original, or perforate it, to show his name and the date, and return the original to the person from whom received. If stamps are affixed, he shall, if satisfied that the stamps represent the proper amount of tax (or that no tax is due, in case the stamp is of the value of 1 cent), cancel the stamps by writing or stamping on the stamps in ink, or perforating them, to show his name and the date, and return the stamped memorandum to the person from whom received. In every case the district director shall retain the duplicate, noting thereon the date of receipt by him and the amount of stamps, if any, affixed to the original.

(b) *Investigation prior to cancellation*. The district director may, before canceling the stamps or returning an unstamped original, in addition to the examination of the memorandum, make such investigation and require such information as he deems necessary to satisfy him that the memorandum is true and complete in every respect and that no additional tax is due.

**§ 45.4895-7 Payment by producers and registered dealers.**

In the case of any transfer (a) by a producer of an interest in silver bullion produced by him from materials containing silver which has not previously entered into industrial, commercial, or monetary use, or (b) by a person registered in accordance with paragraph (a),

(2) of § 45.4894-1, of an interest in silver bullion transferred to him in the regular course of his business of furnishing silver for industrial, professional, or artistic use, the tax, if any, may, at the option of the parties to the transfer, be paid by the affixing of stamps to a return to be filed with the district director on or before the last day of the month following the month in which the transfer is completed. The return shall be made in duplicate, on Form 3 (Silver), and shall set forth all the facts enumerated in paragraph (a) of § 45.4895-5, with respect to each such transfer for which no memorandum in accordance with § 45.4895-5 is delivered to the transferee, except that upon application and proper showing to the district director he may generally, or in individual cases, as he deems appropriate, waive such of the information as he determines to be unnecessary. If abatement is claimed of all or any part of the tax on any transfer, the amount so claimed shall be specified, and a claim for abatement, prepared in accordance with paragraph (i) of § 45.4894-1, shall be attached to the return. The taxpayer shall affix to the return, in the manner specified in §§ 45.4895-1 and 45.4895-4, stamps in value equal to the total amount of tax shown on the return less the total amount of the claims for abatement. If the district director is satisfied that the stamps affixed to the return represent the proper amount of tax, he shall cancel the stamps as provided in § 45.4895-6, return the original and one copy of each claim for abatement to the taxpayer, and retain the duplicate and one copy of each claim. No memorandum in accordance with § 45.4895-5 is required for any transfer included in a return under this section, but the transferee remains liable for any tax or additional tax found due, until the stamps on the return are canceled. For regulations relating to the place for filing the return, see § 45.6091-2.

#### § 45.4895-8 Records.

Each party to every transfer of an interest in silver bullion within the scope of section 4891 shall keep an accurate and complete record of every such transfer whether taxable or not. The record of a transferee shall be so kept that on a subsequent transfer the actual cost to him of the particular interest transferred can be determined. Such records, and the memorandum delivered to the transferee, shall be retained for a period of at least 3 years from the date the tax became due, and must be available for inspection at all times by internal revenue officers. The books of every person liable to the tax shall be open for inspection by Government officers at all times.

#### § 45.4896 Statutory provisions; applicability of tax.

SEC. 4896. *Applicability*—(a) *Territorial extent*. The provisions of this subchapter shall extend to all transfers in the United States of any interest in silver bullion, and to all such transfers outside the United States if either party thereto is a resident of the United States or is a citizen of the United States who has been a resident thereof within 3 months before the date of the transfer or

if such silver bullion or interest therein is situated in the United States.

(b) *Transfers to the United States Government*. The provisions of this subchapter shall extend to transfers to the United States Government (the tax in such cases to be payable by the transferor), but shall not extend to transfers of silver bullion by deposit or delivery at a United States mint under proclamation by the President or in compliance with any Executive order issued pursuant to section 7 of the Silver Purchase Act of 1934 (48 Stat. 1179; 31 U.S.C. 316a).

[Sec. 4896 as originally enacted and in effect July 1, 1960]

#### § 45.4896-1 Applicability of tax.

(a) *Territorial extent*. The tax imposed by section 4891 applies (1) to every transfer in the United States of any interest in silver bullion, and (2) to every transfer outside the United States of any such interest (i) if either party thereto is a resident of the United States, or (ii) if either party to the transfer is a citizen of the United States who has been a resident of the United States at any time during the 3 months immediately preceding the date of the transfer, or (iii) if the silver bullion or interest therein which is transferred is situated in the United States at the time the transfer is made or agreed to be made.

(b) *Transfers to the United States Government*. Transfers of silver bullion or any interest therein to the United States Government are taxable except as provided in paragraph (c) of this section. In case of transfers to the United States Government the tax is payable by the transferor.

(c) *Exempt transfers*. The tax does not apply to transfers of silver bullion by deposit or delivery at a United States mint (1) in compliance with any Executive order issued pursuant to section 7 of the Silver Purchase Act of 1934 (48 Stat. 1179; 31 U.S.C. 316(a)), or (2) to transfers by the United States Government.

#### § 45.4897 Statutory provisions; cross references.

SEC. 4897. *Cross references*. For penalties and other general and administrative provisions applicable to this subchapter, see subtitle F.

[Sec. 4897 as originally enacted and in effect July 1, 1960]

#### § 45.4897-1 Cross references.

(a) For penalties for offenses relating to stamps, see § 45.7208.

(b) For penalty for unauthorized use or sale of stamps, see § 45.7209.

(c) For penalties for other offenses relating to stamps, see § 45.7271.

(d) For penalty for failure to register as required by paragraph (a)(2) of § 45.4894-1, see § 45.7272.

(e) For other administrative provisions relating to the tax imposed by section 4891, see Subpart L of this part.

#### Subpart K—General Provisions Relating to Occupational Taxes

#### § 45.4901 Statutory provisions; payment of tax.

SEC. 4901. *Payment of tax*—(a) *Condition precedent to carrying on certain business*. No person shall be engaged in or carry on any trade or business subject to the tax

imposed by section \* \* \* 4461(2) [4461(a)(2)] (coin-operated gaming devices), \* \* \* until he has paid the special tax therefor.

(b) *Computation*. All special taxes shall be imposed as of on the first day of July in each year, or on commencing any trade or business on which such tax is imposed. In the former case the tax shall be reckoned for 1 year, and in the latter case it shall be reckoned proportionately, from the first day of the month in which the liability to a special tax commenced, to and including the 30th day of June following.

(c) *How paid*—(1) *Stamp*. All special taxes imposed by law shall be paid by stamps denoting the tax.

(2) *Assessment*. For authority of the Secretary or his delegate to make assessments where the special taxes have not been duly paid by stamp at the time and in the manner provided by law, see subtitle F.

[Sec. 4901 as originally enacted and in effect July 1, 1960]

#### § 45.4901-1 Payment of special tax.

(a) *Condition precedent to carrying on certain business*. No person shall maintain for use or permit the use of, on any place or premises occupied by him, a coin-operated amusement or gaming device defined in section 4462(a)(2) (see paragraphs (b) and (c) of § 45.4462-1) until he has filed a return on Form 11-B and paid the special tax imposed by section 4461(a)(2). For other requirements relating to special taxes imposed by sections 4461, 4471, 4821, and 4841, see §§ 45.7011 and 45.7011-1.

(b) *Computation of special tax*. The tax year begins July 1, and ends June 30 of the following calendar year. Persons commencing business between August 1 and June 30 (both dates inclusive) shall pay a proportionate part of the annual tax. The term "commencing business" in the case of a coin-operated amusement and gaming device means the initial maintenance for use on the taxpayer's premises of such a device. Persons in business for only a portion of a month are liable for tax for the full month, i.e., a person first becoming subject to a special tax on, for example, the 25th day of a month, is liable for tax for the entire month. If the business is discontinued prior to the end of the taxable year, the liability is not thereby reduced.

(c) *Tax payment evidenced by a special tax stamp*. (1) Upon receipt of a return on Form 11 or Form 11-B, together with remittance of the full amount of tax due, the district director will issue a special tax stamp, or stamps, as evidence of payment of the special tax.

(2) District directors will distinctly write or print on the stamp before it is delivered or mailed to the taxpayer the following information: (i) the taxpayer's registered name, (ii) the business address of the taxpayer, and (iii) such other information as is called for by the form. Special tax stamps will be transmitted by ordinary mail, unless it is requested that they be transmitted by registered or certified mail in which case the additional cost to cover fees shall be remitted with the return.

(3) District directors and their collection officers are forbidden to issue re-

ceipts in lieu of stamps representing the payment of special taxes.

(d) *Cross references.* For provisions relating to Form 11 or Form 11-B, see § 45.6011(a)-6 (relating to returns), § 45.6071-2 (relating to time for filing returns), § 45.6091-1 (relating to place for filing returns), and paragraph (g) of § 45.6151-1 (relating to time and place for paying tax shown on returns).

**§ 45.4902 Statutory provisions; liability of partners.**

SEC. 4902. *Liability of partners.* Any number of persons doing business in copartnership at any one place shall be required to pay but one special tax.

[Sec. 4902 as originally enacted and in effect July 1, 1960]

**§ 45.4902-1 Partnership liability.**

Any number of persons doing business in copartnership shall be required to pay but one special tax. The district director may issue a special tax stamp to a copartnership in a firm or trade name, provided the names and addresses of all members of the partnership are disclosed on Form 11 or Form 11-B.

**§ 45.4903 Statutory provisions; liability in case of business in more than one location.**

SEC. 4903. *Liability in case of business in more than one location.* The payment of the special tax imposed \* \* \* shall not exempt from an additional special tax the person carrying on a trade or business in any other place than that stated in the register kept in the office of the official in charge of the internal revenue district; but nothing herein contained shall require a special tax for the storage of goods, wares, or merchandise in other places than the place of business, nor, except as provided in this subtitle, for the sale by manufacturers or producers of their own goods, wares, and merchandise, at the place of production or manufacture, and at their principal office or place of business, provided no goods, wares, or merchandise shall be kept except as samples at said office or place of business.

[Sec. 4903 as originally enacted and in effect July 1, 1960]

**§ 45.4903-1 Each place taxable.**

Special tax shall be paid for each place of business, except that a manufacturer who pays special tax for the place of production may, without incurring additional liability, sell products of his own manufacture at his principal office or place of business, provided no products other than samples are kept there.

**§ 45.4904 Statutory provisions; liability in case of different businesses of same ownership and location.**

SEC. 4904. *Liability in case of different businesses of same ownership and location.* Whenever more than one of the pursuits or occupations described in this subtitle are carried on in the same place by the same person at the same time, except as otherwise provided in this subtitle, the tax shall be paid for each according to the rates severally prescribed.

[Sec. 4904 as originally enacted and in effect July 1, 1960]

**§ 45.4904-1 Each business taxable.**

Where more than one taxable business is conducted by the same person at the same address, special tax for each busi-

ness must be paid. But as to manufacturers see section 4903 and the regulations thereunder. (See also §§ 45.4821-2 and 45.4841-2.)

**§ 45.4905 Statutory provisions; liability in case of death or change of location.**

SEC. 4905. *Liability in case of death or change of location — (a) Requirements.* When any person who has paid the special tax for any trade or business dies, his wife or child, or executors or administrators or other legal representatives, may occupy the house or premises, and in like manner carry on, for the residue of the term for which the tax is paid, the same trade or business as the deceased before carried on, in the same house and upon the same premises, without the payment of any additional tax. When any person removes from the house or premises for which any trade or business was taxed to any other place, he may carry on the trade or business specified in the register kept in the office of the official in charge of the internal revenue district at the place to which he removes, without the payment of any additional tax: *Provided*, That all cases of death, change, or removal, as aforesaid, with the name of the successor to any person deceased, or of the person making such change or removal, shall be registered with the Secretary or his delegate, under regulations to be prescribed by the Secretary or his delegate.

(b) *Registration.* (1) For registration in case of \* \* \*, playing cards, \* \* \*, and white phosphorus matches, see sections \* \* \* 4455 \* \* \*, and 4804(d), respectively.

(2) For other provisions relating to registration, see subtitle F.

[Sec. 4905 as originally enacted and in effect July 1, 1960]

**§ 45.4905-1 Change of ownership.**

(a) *Changes through death.* Whenever any person who has paid the special tax imposed by section 4461, 4471, 4821 or 4841 dies, the surviving spouse or child, or executor or administrator, or other legal representative, may carry on such business for the remainder of the term for which such special tax has been paid without any additional payment, subject to the conditions hereinafter set forth. If the surviving spouse or child, or executor or administrator, or other legal representative of the deceased taxpayer continues the business, such person shall within 30 days after the date of the death of the taxpayer execute a return on Form 11 or Form 11-B, whichever is applicable. Such return shall show the name of the deceased taxpayer, together with all other information required to be reported thereon, and the stamp issued to such taxpayer shall be submitted with the return for proper notation by the district director.

(b) *Changes from other causes.* A receiver or trustee in bankruptcy may continue the business under the stamp issued to the taxpayer at the place and for the period for which the special tax was paid. An assignee for the benefit of creditors may continue business under his assignor's special tax stamp without incurring additional special tax liability. In cases such as set forth in this paragraph the change shall be registered with the district director in a manner similar to that required by paragraph (a) of this section.

(c) *Changes in firm.* When one or more members of a firm or partnership withdraw, the business may be continued by the remaining partner or partners under the same special tax stamp for the remainder of the period for which the stamp was issued to the firm or partnership. The change, however, shall be registered in the same manner as required in paragraph (a) of this section. If new partners are taken into a firm, the new firm so constituted may not carry on business under the special tax stamp of the old firm. The new firm shall make a return on Form 11 or Form 11-B, whichever is applicable, and pay the special tax imposed by the applicable section (sections 4461, 4471, 4821 or 4841, as the case may be) reckoned from the first day of the month in which it began business, even though the name of such firm be the same as that of the old. If the members of a partnership, which has paid the special tax, form a corporation to continue the business, a new special tax stamp must be obtained in the name of the corporation.

(d) *Change in corporation.* If a corporation changes its name, no additional tax is due, provided the change in name is registered with the district director in the manner required by paragraph (a) of this section. An increase in the capital stock of a corporation does not create a new special tax liability if the laws of the State under which it is incorporated permit such increase without the formation of a new corporation. A stockholder in a corporation, who after its dissolution continues the business, incurs liability for the special tax unless he already has a special tax stamp obtained in respect of activities conducted as a sole proprietor.

**§ 45.4905-2 Change of address.**

(a) *Procedure by taxpayer.* Whenever a taxpayer changes his business address to a location other than that specified in his last return on Form 11 or Form 11-B, he shall, within 30 days after the date of such change, register the change with the district director from whom the special tax stamp was purchased by filing a new return, Form 11 or Form 11-B, designated "Supplemental Return", and setting forth the new address and the date of change. The taxpayer's special tax stamp shall accompany the supplemental return for proper notation by the district director. As to liability in case of failure to register a change of address within 30 days, see § 45.4905-3.

(b) *Procedure by district director —*  
(1) *Removal within district.* When registration of a change of address within the same district is made by a taxpayer in the manner specified in paragraph (a) of this section, the district director, if necessary, will enter on his records the new address and the date of change. If the information disclosed on the supplemental return is such as to require a change on the face of the special tax stamp, the district director will make the necessary change and return the stamp to the taxpayer for posting as provided in § 45.6806.

(2) *Removal to another district.* In case of removal of the taxpayer's place

of business to another district, the district director after noting the transfer on his records, shall transmit the special tax stamp to the district director for the district to which such business was removed. The latter will make proper entry on his records, as in the case of an original registration in his district, correct the address on the stamp, if necessary, and also note thereon his name, title, date, and district, and then forward the stamp to the taxpayer for posting as provided in § 45.6806.

**§ 45.4905-3 Liability for failure to register change.**

A person succeeding to and carrying on a business for which the special tax has been paid, or a taxpayer who relocates his business, without registering the change as provided in §§ 45.4905-1 and 45.4905-2 will be liable to an additional tax and to the interest and additions to the tax prescribed in §§ 301.6601, 301.6601-1, 301.6651, and 301.6651-1 of this chapter (Regulations on Procedure and Administration).

**§ 45.4906 Statutory provisions; application of State laws.**

Sec. 4906. *Application of State laws.* The payment of any special tax imposed by this subtitle for carrying on any trade or business shall not be held to exempt any person from any penalty or punishment provided by the laws of any State for carrying on the same within such State, or in any manner to authorize the commencement or continuance of such trade or business contrary to the laws of such State or in places prohibited by municipal law; nor shall the payment of any such tax be held to prohibit any State from placing a duty or tax on the same trade or business, for State or other purposes.

[Sec. 4906 as originally enacted and in effect July 1, 1960]

**§ 45.4906-1 State laws applicable.**

Payment of special tax under Federal law confers no right or privilege to conduct business contrary to State law. The holder of a special-tax stamp issued by the Federal Government may still be punishable under a State law prohibiting or regulating the manufacture or sale of adulterated or process or renovated butter. On the other hand, compliance with State law affords no immunity under Federal law. Persons who engage in business in violation of the law of a State are, nevertheless, required to pay special tax as imposed under the internal revenue laws of the United States.

**§ 45.4907 Statutory provisions; Federal agencies or instrumentalities.**

Sec. 4907. *Federal agencies or instrumentalities.* Any special tax imposed by this subtitle \* \* \* shall apply to any agency or instrumentality of the United States unless such agency or instrumentality is granted by statute a specific exemption from such tax.

[Sec. 4907 as originally enacted and in effect July 1, 1960]

**§ 45.4907-1 Federal agencies or instrumentalities.**

Any agency or instrumentality of the United States, such as an Army exchange, Navy exchange, etc., is liable to a special tax unless granted by statute a specific exemption therefrom.

**Subpart L—Administrative Provisions**

**§ 45.6001 Statutory provisions; notice or regulations requiring records, statements, and special returns.**

Sec. 6001. *Notice or regulations requiring records, statements, and special returns.* Every person liable for any tax imposed by this title, or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary or his delegate may from time to time prescribe. Whenever in the judgment of the Secretary or his delegate it is necessary, he may require any person, by notice served upon such person or by regulations, to make such returns, render such statements, or keep such records, as the Secretary or his delegate deems sufficient to show whether or not such person is liable for tax under this title.

[Sec. 6001 as originally enacted and in effect July 1, 1960]

**§ 45.6001-1 Records in general.**

(a) *Form of records.* The records required by the regulations in this part shall be kept accurately, but no particular form is required for keeping such records. See, however, the requirements in § 45.4804-10 (relating to form for daily record in the case of manufacturers of white phosphorus matches) and §§ 45.4872-1 to 45.4872-4, inclusive (relating to records regarding sales of cotton for future delivery). Such forms and systems of accounting shall be used as will enable the district director to ascertain whether liability for tax is incurred and, if so, the amount thereof.

(b) *Copies of returns, schedules, and statements.* Every person who is required, by the regulations in this part or by instructions applicable to any form prescribed thereunder, to keep any copy of any return, schedule, statement, or other document, shall keep such copy as a part of his records.

(c) *Records of claimants.* Any person who, pursuant to the regulations in this part, claims a refund, credit, or abatement, shall keep a complete and detailed record with respect to the tax, interest, addition to the tax, additional amount, or assessable penalty to which the claim relates. Such record shall include any records required of the claimant by paragraph (b) of this section and by §§ 45.6001-2 to 45.6001-5, inclusive, which relate to the claim.

(d) *Place and period for retention of records.* (1) All records required by the regulations in this part shall be maintained, by the person required to keep them, at one or more convenient and safe locations accessible to internal revenue officers, and shall at all times be available for inspection by such officers.

(2) Except as otherwise provided in the following sentence, every person required by the regulations in this part to keep records in respect of a tax (whether or not such person incurs liability for such tax) shall retain such records for at least three years after the due date of such tax for the return period to which the records relate, or the date such tax is paid, whichever is the later. The records of claimants required by paragraph (c) of this section shall be retained for a period of at least three years after the date the claim is filed.

(e) *Microfilm reproductions.* General books of account, such as cash books, journals, voucher registers, ledgers, etc., shall be maintained and preserved in their original form. However, microfilm reproductions of supporting records of details, such as invoices, vouchers, production reports, sales records, certificates, proofs of exportation, etc., may be kept in lieu of the original records provided the person required to keep such records (1) retains such microfilmed copies for the period specified in paragraph (d) of this section, (2) provides adequate facilities for the preservation of such films and for the ready inspection and location thereof, including a projector for viewing such records in the event inspection is necessary for tax purposes, and (3) makes any transcription which may be required of the information contained on the microfilm.

**§ 45.6001-2 Records required to be kept by manufacturers of adulterated butter, process or renovated butter, or filled cheese.**

(a) *Manner of keeping.* (1) A manufacturer shall keep at his place of business separate records of adulterated butter, of process or renovated butter, and of filled cheese. If the record is kept as hereinafter prescribed in the manufacturer's own books or in other convenient form no other record will be necessary. Care should be taken to exclude from the record any product other than (i) adulterated butter, (ii) process or renovated butter, (iii) filled cheese, and (iv) the materials or ingredients used in the manufacture of each product.

(2) Entry shall be made not later than the day following that on which each transaction occurred. Quantities reported shall be as indicated by the tax-paid stamps affixed to the packages, except that where the product is withdrawn free of tax for export, or where the product is returned to the factory, the actual quantity will be recorded. A fraction of a pound shall be accounted as a pound.

(b) *Items.* The record must show: (1) The number of pounds of each material or ingredient used in the production of adulterated butter, process or renovated butter, or filled cheese, and the number of pounds of such materials used for other purposes.

(2) The number of pounds of each product produced.

(3) The number of pounds in each lot disposed of, the name of the consignee, the address to which delivered, and the date of shipment.

(4) The number of pounds in each lot returned to the factory, the name of the person by whom returned, the address from which returned, and the date of receipt.

(5) The number of pounds reworked, disposed of as grease, dumped, or otherwise destroyed.

(6) The total value of tax stamps purchased and used.

(c) *Transactions.* The following rules will apply:

(1) *Samples.* Sample packages of tax-paid adulterated butter, process or renovated butter or filled cheese distributed

gratuitously shall be recorded in the same manner as if the packages were sold.

(2) *Transfers to self.* Where adulterated butter, process or renovated butter, or filled cheese is transferred by a manufacturer to himself as a wholesale or retail dealer, the transaction shall be recorded in the same manner as a transfer to another person.

(3) *Sales to chain stores.* Where adulterated butter, process or renovated butter, or filled cheese is shipped to one person doing business at different places, as in the case of chain stores, the deliveries to each address shall be recorded separately.

(4) *Drop shipments.* Where a manufacturer receives an order from one person to ship adulterated butter, process or renovated butter, or filled cheese to another, the transaction shall be recorded in the name and address of the consignee, followed by "acc't of" and the name and address of the person for whose account the shipment was made. A manufacturer shall not record consignments on orders in the names of agents, solicitors, or other persons transmitting an order for another party. (See paragraph (c) (5) of § 45.4821-3 as to liability of agents or brokers soliciting orders for adulterated butter.)

**§ 45.6001-3 Records required to be kept by wholesale dealers in adulterated butter.**

(a) *Manner of keeping.* (1) A wholesale dealer shall keep at his place of business records of transactions in adulterated butter. If the record is kept as hereinafter prescribed in the dealer's own books or in other convenient form no other record will be necessary. Care should be taken to exclude from the record any product other than taxpaid and branded adulterated butter.

(2) Entry shall be made not later than the day following that on which the transaction occurred. Quantities reported shall be as indicated by the taxpaid stamps affixed to the packages, except that where goods are returned to or by the wholesaler the actual quantity shall be recorded. A fraction of a pound shall be accounted as a pound.

(b) *Items.* The record must show: (1) The number of pounds in each consignment of adulterated butter received, the name and address of the consignor, and the date of receipt.

(2) The number of pounds in each lot disposed of, the name of the consignee, the address to which delivered, and the date of shipment.

(c) *Transactions.* The following rules will apply:

(1) *Samples.* Sample packages of tax-paid adulterated butter received and disposed of gratuitously shall be recorded in the same manner as adulterated butter which is purchased and sold.

(2) *Transfers to self.* Where adulterated butter is transferred by a wholesale dealer to himself as a retail dealer, the transaction shall be recorded in the same manner as a sale to another person.

(3) *Sales to chain stores.* Where adulterated butter is shipped to one person doing business at different places, as

in the case of chain stores, the deliveries to each address shall be recorded separately.

(4) *Drop shipments.* A wholesale dealer shall not record the receipt of adulterated butter which he orders delivered direct to a third party. The dealer's connection with the transaction shall be shown by the manufacturer as provided in paragraph (c) of § 45.6001-2. Where a wholesale dealer receives an order from one person to ship adulterated butter to another, the transaction shall be recorded in the name and address of the consignee followed by "acc't of" and the name and address of the person giving the order. A wholesale dealer shall not record consignments in the names of agents, solicitors, or other persons transmitting orders for other parties. (See paragraph (c) (5) of § 45.4821-3 as to liability of agents.)

(5) *Returned goods.* Where adulterated butter is returned by a customer to a wholesale dealer the transaction shall be recorded separately from other receipts. The sale of repossessed goods shall be recorded with other disposals. Adulterated butter returned by a wholesale dealer to the manufacturer or other wholesale dealer from whom received shall be recorded separately from other disposals. (See paragraph (c) (6) of § 45.4821-3 as to resales.)

**§ 45.6001-4 Records required to be kept by wholesale dealers in filled cheese.**

Every wholesale dealer in filled cheese shall keep at his place of business a daily record of (a) the number of pounds in each consignment of filled cheese received by him, giving the name and address of the consignor and date of receipt, and (b) the number of pounds of filled cheese disposed of in each instance, name of person to whom shipped or delivered, date of shipment or delivery, and address to which sent.

**§ 45.6001-5 Cross references.**

(a) *Manufacturers of white phosphorus matches.* For record requirements, see § 45.4804-10.

(b) *Cotton futures.* For record requirements relating to persons making, clearing, settling or adjusting transactions in contracts of sale of cotton for future delivery, including cotton clearing associations, see §§ 45.4872-1 to 45.4872-4, inclusive.

(c) *Silver bullion.* For record requirements relating to transfers of interests in silver bullion, see § 45.4895-8.

**§ 45.6011(a) Statutory provisions; general requirement of return, statement, or list; general rule.**

SEC. 6011. *General requirement of return, statement or list—(a) General rule.* When required by regulations prescribed by the Secretary or his delegate any person made liable for any tax imposed by this title, or for the collection thereof, shall make a return or statement according to the forms and regulations prescribed by the Secretary or his delegate. Every person required to make a return or statement shall include therein the information required by such forms or regulations.

[Sec. 6011(a) as originally enacted and in effect July 1, 1960]

**§ 45.6011(a)-1 Returns in general.**

(a) *General rule.* Every person subject to any tax imposed by sections 4451, 4461, 4471, 4591, 4801, 4811, 4821, 4831, 4841, 4851, or 4891 shall make such returns, statements, or memorandums as are required by the regulations in this part. The return, statement, or memorandum shall include therein the information required by the applicable regulations or forms.

(b) *Use of prescribed forms.* Except as otherwise provided by the regulations in this part, copies of the prescribed forms will so far as possible be furnished taxpayers by district directors. A taxpayer will not be excused from making a return, however, by the fact that no return form has been furnished to him. Taxpayers not supplied with the proper forms should make application therefor to the district director in ample time to have their returns prepared, verified, and filed on or before the due date with the district director with whom such returns are required to be filed.

(c) *Execution of returns.* Each return required by the regulations in this part, together with any prescribed copies or supporting data, shall be filled in and disposed of in accordance with the forms, instructions, and regulations applicable thereto. The return shall be carefully prepared so as fully and accurately to set forth the data required to be furnished therein. Returns which have not been so prepared will not be accepted as meeting the requirements of the regulations in this part.

**§ 45.6011(a)-2 Inventories required of manufacturers.**

(a) *Adulterated butter, process or renovated butter, and filled cheese.* Every manufacturer of adulterated butter, process or renovated butter, or filled cheese must file with the district director of internal revenue of the district in which the factory is located a complete and correct inventory, in letter form, stating the quantity of each of the different kinds of materials used in the manufacture of adulterated butter, process or renovated butter, or filled cheese, including all materials or products in process of manufacture or partially manufactured and the quantity of the finished product, stamped and unstamped, and the value of attached and unattached stamps held and owned by him in said factory on the first day of July of each year. An inventory as aforesaid must also be made and filed with the district director at the time of beginning business as a manufacturer, and at the time of discontinuing such business. Letters setting forth the inventories as herein required must contain a written declaration that the statements made therein are made under the penalties of perjury.

(b) *White phosphorus matches.* For inventory requirements relating to white phosphorus matches, see § 45.4804-9.

**§ 45.6011(a)-3 Quarterly return by manufacturer or importer of playing cards.**

(a) *Form 749.* Every manufacturer or importer of playing cards must furnish

to the district director for each calendar quarter an accurate return on Form 749 of the following transactions in packs of playing cards: The number on hand at the beginning of the quarter; the number manufactured during the quarter; the number removed tax-paid and for export during the quarter; the number on hand at the end of the quarter; and the values of all stamps purchased and used during the quarter.

(b) *Return period.* A return on Form 749 must be submitted for each calendar quarter including the calendar quarter in which the manufacturer or importer ceases operations in respect of playing cards. Any stock of playing cards on hand when the business is discontinued must be accounted for on quarterly returns. The return for the last quarter must be marked "Final return."

**§ 45.6011(a)-4 Quarterly return by manufacturer of adulterated butter, process or renovated butter, or filled cheese.**

(a) *Quarterly return, Form 216.* Each manufacturer of adulterated butter, process or renovated butter, or filled cheese shall furnish to the district director, as indicated in § 45.6091-1 and at the time provided by § 45.6071-1, for each calendar quarter of the period of special-tax liability, an accurate return, under the penalties of perjury, on Forms 216 and 216a.

(b) *Preparation and distribution of copies.* Quarterly returns should be prepared from the manufacturer's records and typewritten on Form 216, in duplicate. The first page of the return should be filled out as indicated on the form. The original shall be forwarded to the district director and the duplicate shall be retained by the manufacturer at his factory as a record and shall be available for examination at any time by internal revenue officers. In the execution of the return, conformity with the special-tax return and the special-tax stamp shall be observed. If the special-tax return and stamp show a trade name as well as the real name of the proprietor, both names shall also appear on the quarterly returns, together with the identical address of the premises as given on such special-tax return and stamp.

(c) *Separate returns.* Returns required by this section shall be made separately for each product.

(d) *Supplemental sheets.* Form 216a is a supplemental sheet and shall be used for reporting in detail disposals of new stock and receipt and resale of stock returned by customers. The entries should be double spaced, as indicated by the dotted lines on the sheet. Appropriate headings should be set up in capital letters in the center of the page. Each page should be completely used before beginning another page. The order indicated in paragraphs (e) to (n), inclusive, of this section should be observed.

(e) *Disposals during first quarter of fiscal year or first quarter of commencing business.* Disposals to wholesalers, retailers, and consumers made in the first quarter of each fiscal year, or the quarter of commencing business, as the

case may be, shall be reported on supplemental sheets, Form 216a, as follows:

(1) *To wholesalers.* Disposals to wholesalers shall be listed under a heading, Withdrawn Tax-Paid, Wholesale Dealers, with the entries grouped in alphabetical order of (i) the names of States and (ii) the names of consignees in each State group. State names should be in capital letters centered on the page at the head of each group, and a line left above and below each State subheading. The State name should be omitted in entering the several individual addresses since it will appear at the head of the group. Where a wholesaler operates at more than one place of business (whether or not within the same State), a separate entry shall be made for each place of business of such wholesaler to which consignments are made during the quarter. The aggregate quantity of adulterated butter, process or renovated butter or filled cheese consigned during the quarter to each wholesaler at each place of business shall be reported as provided for by the form.

(2) *To retailers and consumers.* Following the listing of disposals to wholesale dealers the disposals to retailers and consumers shall be listed under a heading, Withdrawn Tax-Paid, Retailers and Consumers, in the same manner as specified in subparagraph (1) of this paragraph with respect to wholesalers.

(f) *Disposals during other quarters.* Disposals to wholesalers, retailers, and consumers in each quarter other than the first quarter of the fiscal year, or the quarter of commencing business, shall be reported on supplemental sheets, Form 216a, as follows:

(1) *To consignees listed on prior returns of same fiscal year.* The total quantity of adulterated butter, process or renovated butter, or filled cheese disposed of during the quarter to all persons, including wholesalers, retailers, and consumers, listed on returns for prior quarters of the same fiscal year, shall be reported as a single amount designated as "Disposed of to consignees listed on returns for previous quarters of the same fiscal year."

(2) *To other consignees.* Disposals to wholesalers, retailers, and consumers not listed on any return for a prior quarter of the same fiscal year shall be reported in detail in the manner prescribed in paragraph (e) of this section.

(g) *Registered names and addresses required.* Names and addresses shall be entered as they appear on customers' special-tax stamps. Where the shipping address differs from the registered address, the name of the shipping point, in parentheses, should be entered with the registered address. (See paragraph (f) of § 45.4815(a)-1.) Surnames should precede first names. County names should be included in the addresses of customers located in the States specified at the head of Form 216a. This subparagraph is not applicable in the case of manufacturers of process or renovated butter since the wholesalers and retailers thereof do not obtain special-tax stamps.

(h) *Repeat shipments.* Only the aggregate quantity disposed of to each person at one address during the quarter shall be reported. Example: If 20 sales of 10 pounds each were made, the name of the purchaser and the address to which delivered should be entered but once with the total of 200 pounds.

(i) *Chain store entries.* Subject to the provisions of paragraphs (e) and (f) of this section, disposals to chain stores shall be reported in alphabetical order of the names of (1) the cities or towns in which the stores are located and (2) the streets on which situated. Numerical order of street numbers should be observed where more than one store is located on the same street.

(j) *Exportation.* Under a heading, Withdrawn Free of Tax for Export, there shall be entered as to each foreign consignment (1) date of invoice, (2) name of consignee and place of consignment, and (3) quantity. The entries shall be in the order prescribed in paragraph (e) of this section for reporting disposals to wholesale dealers. This paragraph has no application in the case of process or renovated butter or filled cheese, since there is no provision for tax-free exportation thereof.

(k) *Returned goods.* Under a heading, Returned Goods, there shall be shown in alphabetical order (1) the name and address of each consignor, and (2) the total quantity received during the quarter from him. Only adulterated butter, process or renovated butter, or filled cheese of the manufacturer's own production may be entered under this heading. Such product received from other manufacturers for reworking shall be included in the total of returned goods reworked as prescribed in paragraph (m) of this section.

(l) *Resales.* Under the headings, "Resales to wholesale dealers" and "Resales to retailers and consumers", entries shall be made in the same manner as disposals of new stock to such customers as prescribed in paragraph (e) of this section. (See paragraph (c)(6) of § 45.4821-3 as to resale of returned goods.)

(m) *Reworked or denatured.* The total quantity of any adulterated butter, process or renovated butter, or filled cheese not removed from the factory but reworked or disposed of as grease shall be reported in the credit column of the summary of new stock. The total quantity of returned goods reworked or disposed of as grease shall be reported in the credit column of the summary. The combined totals of adulterated butter, process or renovated butter, or filled cheese reworked, as shown in the respective summaries, shall be reported under the heading, "Materials used during month", page 1, Form 216.

(n) *Losses.* Adulterated butter, process or renovated butter, or filled cheese accidentally destroyed, lost in transit, or unaccounted for shall be reported in the credit column of the proper summary and an appropriate explanation inserted.

(o) *Summary.* The quantities entered under the respective headings on Form 216a shall be totaled and the

totals carried to the proper lines of the summaries, page 1, Form 216. The actual balances of new stock and returned goods on hand at the beginning and close of the quarter shall be entered in the proper summary, which should balance. The quantities reported on hand at the beginning of the quarter shall agree with the quantities reported on hand at the close of the preceding quarter.

(p) *Correcting entries.* If after rendering a return it is found that any receipts or disposals were omitted or erroneously reported, correcting entries shall be made on the return for the following quarter.

(q) *Final return.* If the business is discontinued, the return for the quarter in which business ceases should be marked "Final."

**§ 45.6011(a)-5 Quarterly return by wholesale dealers in adulterated butter or filled cheese.**

(a) *Quarterly return, Form 2814.* Each wholesale dealer in adulterated butter or filled cheese shall furnish to the district director, as indicated in § 45.6091-1 and at the time provided by § 45.6071-1, for each calendar quarter of the period of special-tax liability, an accurate return, under the penalties of perjury, on Forms 2814 and 2814a.

(b) *Preparation and distribution of copies.* Quarterly returns should be prepared from the wholesale dealer's records and typewritten on Form 2814, in duplicate. The first page of the return should be filled out as indicated on the form. The original shall be forwarded to the district director and the duplicate shall be retained by the wholesale dealer at his principal place of business as a record and shall be available for examination at any time by internal revenue officers. In the execution of the return, conformity with the special-tax return and the special-tax stamp shall be observed. If the special-tax return and stamp show a trade name as well as the real name of the proprietor, both names shall also appear on the quarterly returns, together with the identical address of the premises as given on such special-tax return and stamp.

(c) *Separate returns.* Returns required by this section shall be made separately for each product.

(d) *Receipts—(1) During first quarter of fiscal year or quarter of commencing business.* Under the heading, Adulterated Butter (or Filled Cheese) Received From Manufacturers and Wholesale Dealers, page 1, Form 2814, each entry shall show (i) the name and address of each consignor, and (ii) the total quantity received during the quarter from him. Regardless of the number of consignments received during the quarter from the same consignor, only a single entry showing the aggregate of all such consignments shall be made.

(2) *During other quarters.* Adulterated butter or filled cheese received from manufacturers and wholesale dealers in each quarter other than the first quarter of each fiscal year, or the quarter of commencing business, as the case may be,

shall be reported on Form 2814 as follows:

(i) *From consignors listed on returns for previous quarters of same fiscal year.* The total quantity of adulterated butter or filled cheese received from all manufacturers and wholesale dealers listed on returns for prior quarters of the same fiscal year, shall be reported as a single amount designated as "Received from consignors listed on returns for previous quarters of the same fiscal year."

(ii) *From other consignors.* Adulterated butter or filled cheese received from manufacturers and wholesale dealers not listed on a return for a prior quarter of the same fiscal year shall be reported in detail in the manner prescribed in subparagraph (1) of this paragraph.

(e) *Returned goods.* Adulterated butter or filled cheese returned by customers should not be entered in detail on returns. Only the total quantity so received during the quarter shall be reported. The amount should be entered in the debit column of the summary.

(f) *Supplemental sheets.* Form 2814a is a supplemental sheet and shall be used for reporting disposals in detail. The entries should be double-spaced as indicated by the dotted lines on the sheet. Appropriate headings should be set up in capital letters in the center of the page. Each page should be completely used before beginning another page. The order indicated in paragraphs (g) to (m) of this section should be observed.

(g) *Disposals during first quarter of fiscal year or quarter of commencing business.* Disposals to wholesalers and retailers and consumers in the first quarter of each fiscal year, or the quarter of commencing business, shall be reported in full detail on supplemental sheets, Form 2814a as follows:

(1) *To wholesalers.* Disposals to wholesalers shall be listed under a heading, Disposals to Wholesale Dealers, with the entries grouped in alphabetical order of (i) the names of States, and (ii) the names of consignees in each State group. State names should be in capital letters centered on the page at the head of each group, and a line left above and below each State subheading. The State name should be omitted in entering the several individual addresses since it will appear at the head of the group. Where a wholesaler operates at more than one place of business whether or not within the same State, a separate entry shall be made for each place of business of such wholesaler to which consignments are made during the quarter. The aggregate quantity of adulterated butter or filled cheese consigned during the quarter to each wholesaler at each place of business shall be reported as provided for by the form.

(2) *To retailers and consumers.* Following the listing of disposals to wholesale dealers the disposals to retailers and consumers shall be listed under a heading, Disposals to Retailers and Consumers, in the same manner as specified in subparagraph (1) of this paragraph with respect to wholesalers.

(h) *Disposals during other quarters.* Disposals to wholesalers, retailers, and consumers in each quarter other than

the first quarter of the fiscal year, or the quarter of commencing business, shall be reported on supplemental sheets, Form 2814a, as follows:

(1) *To consignees listed on prior returns of same fiscal year.* The total quantity of adulterated butter or filled cheese disposed of during the quarter to all persons, including wholesalers, retailers, and consumers, listed on returns for prior quarters of the same fiscal year, shall be reported as a single amount designated as "Disposed of to consignees listed on returns for previous months of the same fiscal year."

(2) *To other consignees.* Disposals to wholesalers, retailers, and consumers not listed on any return for a prior quarter of the same fiscal year shall be reported in detail in the manner prescribed in paragraph (g) of this section.

(i) *Registered names and addresses required.* Names and addresses shall be entered as they appear on customers' special-tax stamps. Where the shipping address differs from the registered address, the name of the shipping point, in parentheses, should be entered with the registered address. (See paragraph (f) of § 45.4815(a)-1.) Surnames should precede first names. County names should be included in the addresses of customers located in the States specified at the head of Form 2814a.

(j) *Repeal shipments.* Only the aggregate quantity disposed of to each person at one address during the quarter shall be reported. Example: If 20 sales of 10 pounds each were made, the name of the purchaser and the address to which delivered should be entered but once with the total of 200 pounds.

(k) *Chain store entries.* Subject to the provisions of paragraphs (g) and (h) of this section, disposals to chain stores shall be reported in alphabetical order of the names of (1) the cities or towns in which the stores are located, and (2) the streets on which situated. Numerical order of street numbers should be observed where more than one store is located on the same street.

(l) *Goods returned or otherwise disposed of.* Under a heading, "Returned to Shipper," there shall be shown in alphabetical order (1) the name and address of each consignor and (2) the total quantity received during the month from him. Similar entries, under appropriate headings, shall be made for adulterated butter or filled cheese disposed of as grease, or for other inedible purposes, or destroyed.

(m) *Losses.* Adulterated butter or filled cheese accidentally destroyed, lost in transit, or unaccounted for shall be reported in the credit column of the summary and an appropriate explanation inserted.

(n) *Summary.* The quantities entered under the respective headings on Form 2814a shall be totaled and the totals carried to the proper lines of the summaries, page 1, Form 2814. The actual quantity on hand at the beginning and close of the quarter shall be entered in the summary, which should balance. The quantity reported on hand at the beginning of the quarter shall agree with

the quantity reported on hand at the close of the preceding quarter.

(c) *Correcting entries.* If after rendering a return it is found that any receipts or disposals were omitted or erroneously reported, correcting entries shall be made on the return for the following quarter.

(p) *Final return.* If the business is discontinued, the return for the quarter in which business ceases should be marked "Final."

#### § 45.6011(a)-6 Returns relating to special taxes.

(a) *Return on Form 11.* Every person required to pay a special tax imposed by section 4821 or section 4841 shall make a return on Form 11 in accordance with the instructions applicable thereto.

(b) *Returns on Form 11-B.* Every person required to pay a special tax imposed by section 4461 or 4771 shall make a return on Form 11-B in accordance with the instructions applicable thereto.

(c) *Execution of returns, Form 11 and Form 11-B.* In addition to the requirements for the execution of tax returns generally as set forth in paragraph (c) of § 45.6011(a)-1, it is required that where the business is operated in a trade name, both the real name of the proprietor and the trade name shall be used when executing Form 11 and Form 11-B.

#### § 45.6011(a)-7 Cross references.

(a) *Manufacturers of white phosphorus matches.* For requirements for quarterly returns, see § 45.4804-11.

(b) *Cotton futures.* For requirements for quarterly returns by persons making, clearing, settling, or adjusting transactions in contracts of sale of cotton for future delivery, including cotton clearing associations, see §§ 45.4872-5 and 45.4872-6.

(c) *Silver bullion.* For requirements for memorandums and returns relating to transfers of interests in silver bullion, see §§ 45.4894-5 and 45.4895-7.

(d) *Signing and verification.* For provisions relating to the signing of returns, see §§ 45.6061 and 45.6061-1. For provisions relating to the verifying of returns, see §§ 45.6065 and 45.6065-1.

#### § 45.6061 Statutory provisions; signing of returns and other documents.

SEC. 6061. *Signing of returns and other documents.* \* \* \* any return, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall be signed in accordance with forms or regulations prescribed by the Secretary or his delegate.

[Sec. 6061 as originally enacted and in effect July 1, 1960]

#### § 45.6061-1 Signing of returns and other documents.

Each return or other document required under the regulations in this subpart shall be signed by (a) the individual, if the taxpayer is an individual; (b) the president, vice president or other principal officer, if the taxpayer is a corporation; (c) a responsible and duly authorized member or officer having knowledge of its affairs, if the taxpayer

is a partnership or other unincorporated organization; or (d) the fiduciary, if the taxpayer is a trust or estate. The return may be executed by an agent in the name of the taxpayer if an acceptable power of attorney is filed with the district director and the return includes the total liability of the taxpayer for the period covered by the return.

#### § 45.6065 Statutory provisions; verification of returns.

SEC. 6065. *Verification of returns—(a) Penalties of perjury.* Except as otherwise provided by the Secretary or his delegate, any return, declaration, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall contain or be verified by a written declaration that it is made under the penalties of perjury.

(b) *Oath.* The Secretary or his delegate may by regulations require that any return, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall be verified by an oath. This subsection shall not apply to returns and declarations with respect to income taxes made by individuals.

[Sec. 6065 as originally enacted and in effect July 1, 1960]

#### § 45.6065-1 Verification of returns.

If a return, declaration, statement, or other document made under the regulations in this part is required by the regulations contained in this part, or the form and instructions issued with respect to such return, declaration, statement, or other document, to contain or be verified by a written declaration that it is made under the penalties of perjury, such return, declaration, statement, or other document shall be so verified by the person signing it.

#### § 45.6071 Statutory provisions; time for filing returns and other documents.

SEC. 6071. *Time for filing returns and other documents—(a) General rule.* When not otherwise provided for by this title, the Secretary or his delegate shall by regulations prescribe the time for filing any return, statement, or other document required by this title or by regulations.

(b) *Special taxes.* For payment of special taxes before engaging in certain trades and businesses, see section 4901 and \* \* \*.

[Sec. 6071 as amended and in effect July 1, 1960]

#### § 45.6071-1 Time for filing returns or other documents.

(a) *Returns or other documents.* A return required under §§ 45.6011(a)-3 to 45.6011(a)-5, inclusive, shall be filed on or before the last day of the first calendar month following the period for which it is made. The inventories required by § 45.6011(a)-2 shall be filed with the district director on the first day of July of each year, or at the time of commencing and at the time of concluding business, if before or after the first day of July.

(b) *Cross references—(1) Cotton futures—(i) Returns to be made by persons dealing in contracts of sale of cotton for future delivery.* See § 45.4872-5 for provisions relating to time for filing returns.

(ii) *Returns to be made by cotton clearing associations.* See § 45.4872-6 for provisions relating to time for filing returns by persons who act in the capacity of a clearing house, clearing association, or similar institution for the purpose of clearing, settling, or adjusting contracts of sale of any cotton for future delivery.

(2) *Silver bullion.* (i) For regulations relating to time for filing memorandums of transfer or monthly returns in the case of transfers of interests in silver bullion, see paragraph (d) of § 45.4895-5 and § 45.4895-7, respectively.

(ii) For regulations relating to time for filing returns on Form 11 (Silver) and Form 11A (Silver), see paragraph (b) of § 45.4894-2.

#### § 45.6071-2 Special taxes.

(a) *Coin-operated gaming devices return on Form 11-B.* The first return required to be made on Form 11-B shall be filed, as provided in § 45.4901-1, to cover the period beginning with the first day of the calendar month in which a person engages in the trade or business of maintaining for use or permitting the use of, on any place or premises occupied by him, a coin-operated gaming device and ending with the following June 30. Thereafter, each return required to be made on Form 11-B shall be filed on or before July 1 to cover a 1-year period (beginning July 1 and ending June 30 of the following calendar year) during which the tax liability continues.

(b) *Other special taxes.* In the case of persons liable for the special taxes imposed by sections 4461(a)(1) (relating to coin-operated amusement devices), 4471 (relating to bowling alleys, billiard and pool tables), 4821 (relating to adulterated butter and process or renovated butter), and 4841 (relating to filled cheese), the first return required to be made on Form 11 or Form 11-B, as the case may be, shall be filed before the last day of the month in which the business commences to cover the period beginning with the first day of such month and ending with the following June 30. Thereafter, each return required to be made on Form 11 or Form 11-B, as the case may be, shall be filed on or before the last day of July to cover a 1-year period (beginning July 1 and ending June 30 of the following calendar year) during which the tax liability continues.

#### § 45.6071-3 Last day for filing.

For provisions relating to the time for filing a return when the prescribed due date falls on Saturday, Sunday, or a legal holiday, see § 301.7503-1 of this chapter (Regulations on Procedure and Administration).

#### § 45.6081(a) Statutory provisions; extension of time for filing returns.

SEC. 6081. *Extension of time for filing returns—(a) General rule.* The Secretary or his delegate may grant a reasonable extension of time for filing any return, declaration, statement, or other document required by this title or by regulations. Except in the case of taxpayers who are abroad, no such extension shall be for more than 6 months.

[Sec. 6081(a) as originally enacted and in effect July 1, 1960]

**§ 45.6081(a)-1 Extension of time for filing returns.**

No extension of time will be granted for filing any return or other document required in respect of the taxes to which the regulations in this part have application.

**§ 45.6091 Statutory provisions; place for filing returns or other documents.**

SEC. 6091. *Place for filing returns or other documents*—(a) *General rule.* When not otherwise provided for by this title, the Secretary or his delegate shall by regulations prescribe the place for the filing of any return, declaration, statement, or other document, or copies thereof, required by this title or by regulations.

(b) *Tax returns.* In the case of returns of tax required under authority of part II of this subchapter—

(1) *Individuals.* Returns (other than corporation returns) shall be made to the Secretary or his delegate in the internal revenue district in which is located the legal residence or principal place of business of the person making the return, or, if he has no legal residence or principal place of business in any internal revenue district, then at such place as the Secretary or his delegate may by regulations prescribe.

(2) *Corporations.* Returns of corporations shall be made to the Secretary or his delegate in the internal revenue district in which is located the principal place of business or principal office or agency of the corporation, or, if it has no principal place of business or principal office or agency in any internal revenue district, then at such place as the Secretary or his delegate may by regulations prescribe.

(4) *Exceptional cases.* Notwithstanding paragraph (1), (2), or (3) of this subsection, the Secretary or his delegate may permit a return to be filed in any internal revenue district, \* \* \*

[Sec. 6091 as originally enacted and in effect July 1, 1960]

**§ 45.6091-1 Place for filing returns and other documents other than for silver bullion.**

(a) *Persons other than corporations.* Except as otherwise provided in § 45.6091-2, any return or other document required of a person other than a corporation shall be filed with the district director for the district in which is located the principal place of business or legal residence of such person. If such person has no principal place of business or legal residence in any internal revenue district, the return or document shall be filed with the District Director at Baltimore, Maryland, except as provided in paragraph (c) of this section.

(b) *Corporations.* Except as otherwise provided in § 45.6091-2, any return or other document required of a corporation shall be filed with the district director for the district in which is located the principal place of business or principal office or agency of the corporation, except as provided in paragraph (c) of this section.

(c) *Returns of taxpayers outside the United States.* Any return or other document required of a person (other than a corporation) outside the United States having no legal residence or principal place of business in any internal revenue district, or any return or other document required of a corporation having

no principal place of business or principal office or agency in any internal revenue district, shall be filed with the Director, International Operations Division, Internal Revenue Service, Washington 25, D.C.

(d) *Exceptional cases.* The Commissioner may permit the filing of any return or document required to be made under the regulations in this part in any internal revenue district, notwithstanding the provisions of paragraphs (1) and (2) of section 6091(b) and paragraphs (a), (b), and (c) of this section.

**§ 45.6091-2 Place for filing memorandums or returns relating to silver bullion.**

(a) *Persons other than corporations.* Except as provided in paragraph (c) of this section, the memorandum of transfer of an interest in silver bullion described in § 45.4895-5, the monthly return provided in § 45.4895-7, and the forms specified in §§ 45.4894-1 to 45.4894-7, inclusive, shall be filed with the district director for the district in which is located the principal place of business or legal residence of the party to the transfer paying the tax on such transfer. If such person has no principal place of business or legal residence in any internal revenue district, the memorandum or monthly return shall be filed with the District Director at Baltimore, Maryland.

(b) *Corporations.* Except as provided in paragraph (c) of this section, if the party to the transfer paying the tax thereon is a corporation, the memorandum, the monthly return, and the forms specified in §§ 45.4894-1 to 45.4894-7, inclusive, shall be filed with the district director for the district in which is located the principal place of business or principal office or agency of such corporation.

(c) *Memorandums or returns filed by taxpayers outside the United States.* If the party to the transfer paying the tax thereon is a person (other than a corporation) outside the United States having no legal residence or principal place of business in any internal revenue district, or is a corporation having no principal place of business or principal office or agency in any internal revenue district, the memorandum, the monthly return, and the forms specified in §§ 45.4894-1 to 45.4894-7, inclusive, shall be filed with the Director, International Operations Division, Internal Revenue Service, Washington 25, D.C.

**§ 45.6101 Statutory provisions; period covered by returns or other documents.**

SEC. 6101. *Period covered by returns or other documents.* When not otherwise provided for by this title, the Secretary or his delegate may by regulations prescribe the period for which, or the date as of which, any return, statement, or other document required by this title or by regulations, shall be made.

[Sec. 6101 as originally enacted and in effect July 1, 1960]

**§ 45.6101-1 Period covered by returns or other documents.**

(a) *In general.* Except as provided in paragraphs (b) and (c) of this section,

the period for which returns are required by the regulations in this part is a calendar quarter.

(b) *Silver bullion.* For the period for which returns are required in the case of transfers of silver bullion, see § 45.4895-7. For alternative provisions, see § 45.4895-5.

(c) *Special taxes.* For the period for which returns are required in the case of special taxes, see paragraph (b) of § 45.4901-1.

**§ 45.6151 Statutory provisions; time and place for paying tax shown on returns.**

SEC. 6151. *Time and place for paying tax shown on returns*—(a) *General rule.* Except as otherwise provided in this section, when a return of tax is required under this title or regulations, the person required to make such return shall, without assessment or notice and demand from the Secretary or his delegate, pay such tax to the principal internal revenue officer for the internal revenue district in which the return is required to be filed, and shall pay such tax at the time and place fixed for filing the return (determined without regard to any extension of time for filing the return).

(b) *Exceptions.* \* \* \*

(c) *Date fixed for payment of tax.* In any case in which a tax is required to be paid on or before a certain date, or within a certain period, any reference in this title to the date fixed for payment of such tax shall be deemed a reference to the last day fixed for such payment (determined without regard to any extension of time for paying the tax).

[Sec. 6151 as originally enacted and in effect July 1, 1960]

**§ 45.6151-1 Time and place for paying special taxes.**

The special taxes required to be reported on Forms 11 and 11-B are due and payable to the district director, without assessment or notice and demand, at the time prescribed in § 45.6071-2 for filing such returns. For regulations relating to place for filing returns, see § 45.6091-1.

**§ 45.6161(a)(1) Statutory provisions; extension of time for paying tax.**

SEC. 6161. *Extension of time for paying tax*—(a) *Amount determined by taxpayer on return*—(1) *General rule.* The Secretary or his delegate, except as otherwise provided in this title, may extend the time for payment of the amount of the tax shown, or required to be shown, on any return or declaration required under authority of this title (or any installment thereof), for a reasonable period not to exceed 6 months from the date fixed for payment thereof. Such extension may exceed 6 months in the case of a taxpayer who is abroad.

[Sec. 6161(a) as originally enacted and in effect July 1, 1960]

**§ 45.6161(a)(1)-1 Extension of time for paying tax shown on return.**

No extension of time will be granted for payment of all or any part of the amount of the taxes to which the regulations in this part have application.

**§ 45.6804 Statutory provisions; attachment and cancellation.**

SEC. 6804. *Attachment and cancellation.* Except as otherwise expressly provided in this title, the stamps referred to in section 6801 shall be attached, protected, removed, canceled, obliterated, and destroyed, in such manner and by such instruments or

other means as the Secretary or his delegate may prescribe by rules or regulations.

[Sec. 6804 as originally enacted and in effect July 1, 1960.]

**§ 45.6804-1 Attachment and cancellation.**

The stamps required to be used for the payment of the taxes imposed by the statutory provisions included in this part shall be attached, protected, removed, canceled, obliterated, and destroyed as set forth in the regulations in this part.

**§ 45.6805 Statutory provisions; redemption of stamps.**

**SEC. 6805. Redemption of stamps—(a) Authorization.** The Secretary or his delegate, subject to regulations prescribed by him, may, upon receipt of satisfactory evidence of the facts, make allowance for or redeem such of the stamps, issued under authority of any internal revenue law, as may have been spoiled, destroyed, or rendered useless or unfit for the purpose intended, or for which the owner may have no use.

**(b) Method and conditions of allowance.** Such allowance or redemption may be made, either by giving other stamps in lieu of the stamps so allowed for or redeemed, or by refunding the amount or value to the owner thereof, deducting therefrom, in case of repayment, the percentage, if any, allowed to the purchaser thereof; but no allowance or redemption shall be made in any case until the stamps so spoiled or rendered useless shall have been returned to the Secretary or his delegate, or until satisfactory proof has been made showing the reason why the same cannot be returned; or, if so required by the Secretary or his delegate, when the person presenting the same cannot satisfactorily trace the history of said stamps from their issuance to the presentation of his claim as aforesaid.

**(c) Time for filing claims.** No claim for the redemption of, or allowance for, stamps shall be allowed under this section unless presented within 3 years after the purchase of such stamps from the Government.

**(d) Finality of decisions.** The findings of fact in and the decision of the Secretary or his delegate upon the merits of any claim presented under or authorized by this section shall, in the absence of fraud or mistake in mathematical calculation, be final and not subject to revision by any accounting officer.

[Sec. 6805 as amended and in effect, July 1, 1960]

**§ 45.6806 Statutory provisions; posting occupational tax stamps.**

**SEC. 6806. Posting occupational tax stamps—(a) General rule.** Every person engaged in any business, avocation, or employment, who is thereby made liable to a special tax, shall place and keep conspicuously in his establishment or place of business all stamps denoting payment of said special tax.

**(b) Coin-operated amusement and gaming devices.** The Secretary or his delegate may by regulations require that the stamps denoting the payment of the special tax imposed by section 4461 shall be posted on or in each device in such a manner that it will be visible to any person operating the device.

[Sec. 6806 (a) and (b) as originally enacted and in effect July 1, 1960]

**§ 45.6806-1 Special tax stamp to be posted.**

**(a) In general.** The special tax stamp issued to a taxpayer as evidence of the payment of tax imposed under section

4461 (coin-operated amusement and gaming devices), section 4471 (bowling alleys, billiard and pool tables), section 4821 (adulterated, process or renovated butter), and section 4841 (filled cheese), must be kept posted conspicuously on the premises where the business is operated. Failure to comply will subject the taxpayer to the penalties prescribed in § 45.7273(a).

**(b) Posting of certificate in lieu of stamp.** When a special tax stamp has been lost or destroyed, such fact should be reported at once to the internal revenue officer from whom the stamp was obtained for the purpose of obtaining from him a certificate of payment. Such certificate must be posted in place of the stamp; otherwise the penalty referred to in paragraph (a) of this section for failure to post the stamp will be applicable.

**§ 45.7011 Statutory provisions; registration—persons paying a special tax.**

**SEC. 7011. Registration—persons paying a special tax—(a) Requirement.** Every person engaged in any trade or business on which a special tax is imposed by law shall register with the Secretary or his delegate his name or style, place of residence, trade or business, and the place where such trade or business is to be carried on. In case of a firm or company, the names of the several persons constituting the same, and the places of residence, shall be so registered.

**(b) Registration in case of death or change of location.** Any person exempted under the provisions of section 4905 from the payment of a special tax, shall register with the Secretary or his delegate in accordance with regulations prescribed by the Secretary or his delegate.

[Sec. 7011 as originally enacted and in effect July 1, 1960]

**§ 45.7011-1 Registration—persons paying a special tax.**

Any person required by sections 4461, 4471, 4821, or 4841 to pay a special tax must register with the district director for the district in which his principal place of business is located. Such registration is effected by filing a return, Form 11-B, in the case of the taxes imposed by sections 4461 and 4471, and Form 11, in the case of the taxes imposed by sections 4821 and 4841. Such returns must be executed, signed and verified as required by the regulations prescribed in §§ 45.6011(a)-6, 45.6061-1, and 45.6065-1. See paragraph (a) of § 45.4901-1 for provisions relating to the special tax imposed by section 4461(a)(2), relating to coin-operated gaming devices.

**§ 45.7011-2 Registration in case of change of ownership or location.**

**(a) Cross reference.** See §§ 45.4905-1 to 45.4905-3, inclusive, for provisions regarding registration in case of change of ownership or location.

**§ 45.7011-3 Registration; other requirements.**

**(a) For requirement for registration by manufacturers of playing cards, see § 45.4455-1.**

**(b) For requirement for registration by manufacturers of white phosphorus matches, see § 45.4804-8.**

**§ 45.7208 Statutory provisions; offenses relating to stamps.**

**SEC. 7208. Offenses relating to stamps.** Any person who—

**(1) Counterfeiting.** With intent to defraud, alters, forges, makes, or counterfeits any stamp, coupon, ticket, book, or other device prescribed under authority of this title for the collection or payment of any tax imposed by this title, or sells, lends, or has in his possession any such altered, forged, or counterfeited stamp, coupon, ticket, book, or other device, or makes, uses, sells, or has in his possession any material in imitation of the material used in the manufacture of such stamp, coupon, ticket, book, or other device; or

**(2) Mutilation or removal.** Fraudulently cuts, tears, or removes from any vellum, parchment, paper, instrument, writing, package, or article, upon which any tax is imposed by this title, any adhesive stamp or the impression of any stamp, die, plate, or other article provided, made, or used in pursuance of this title; or

**(3) Use of mutilated, insufficient, or counterfeited stamps.** Fraudulently uses, joins, fixes, or places to, with, or upon any vellum, parchment, paper, instrument, writing, package, or article, upon which any tax is imposed by this title.

**(A)** Any adhesive stamp, or the impression of any stamp, die, plate, or other article, which has been cut, torn, or removed from any other vellum, parchment, paper, instrument, writing, package, or article, upon which any tax is imposed by this title; or

**(B)** Any adhesive stamp or the impression of any stamp, die, plate, or other article of insufficient value; or

**(C)** Any forged or counterfeited stamp, or the impression of any forged or counterfeited stamp, die, plate, or other article; or

**(4) Reuse of stamps—(A) Preparation for reuse.** Willfully removes, or alters the cancellation or defacing marks of, or otherwise prepares, any adhesive stamp, with intent to use, or cause the same to be used, after it has already been used; or

**(B) Trafficking.** Knowingly or willfully buys, sells, offers for sale, or gives away, any such washed or restored stamp to any person for use, or knowingly uses the same; or

**(C) Possession.** Knowingly and without lawful excuse (the burden of proof of such excuse being on the accused) has in possession any washed, restored, or altered stamp, which has been removed from any vellum, parchment, paper, instrument, writing, package, or article; or

**(5) Emptied stamped packages.** Commits the offense described in section 7271 (relating to disposal and receipt of stamped packages) with intent to defraud the revenue, or to defraud any person;

shall be guilty of a felony and, upon conviction thereof, shall be fined not more than \$10,000, or imprisoned not more than 5 years, or both.

[Sec. 7208 as originally enacted and in effect July 1, 1960]

**§ 45.7209 Statutory provisions; unauthorized use or sale of stamps.**

**SEC. 7209. Unauthorized use or sale of stamps.** Any person who buys, sells, offers for sale, uses, transfers, takes or gives in exchange, or pledges or gives in pledge, except as authorized in this title or in regulations made pursuant thereto, any stamp, coupon, ticket, book, or other device prescribed by the Secretary or his delegate under this title for the collection or payment of any tax imposed by this title, shall, upon conviction thereof, be fined not more than \$1,000, or imprisoned not more than 6 months, or both.

[Sec. 7209 as originally enacted and in effect July 1, 1960]

**§ 45.7233 Statutory provisions; failure to pay, or attempt to evade payment of, tax on cotton futures, and other violations.**

SEC. 7233. *Failure to pay, or attempt to evade payment of, tax on cotton futures, and other violations.* Any person—

(1) *Nonpayment or evasion of tax.* Liable to the payment of any tax imposed by subchapter D of chapter 39, who fails to pay, or evades, or attempts to evade the payment of such tax; and

(2) *Other violations.* Who otherwise violates any provision of subchapter D of chapter 39, or any rule or regulation made in pursuance thereof; shall, upon conviction thereof, be fined not less than \$100 nor more than \$20,000, in the discretion of the court; and, in case of natural persons, may, in addition, be punished by imprisonment for not less than 60 days nor more than 3 years, in the discretion of the court.

[Sec. 7233 as originally enacted and in effect July 1, 1960]

**§ 45.7234 Statutory provisions; violations of laws relating to oleomargarine or adulterated butter operations.**

SEC. 7234. *Violation of laws relating to oleomargarine or adulterated butter operations—(a) False branding, selling, or packing, in violation of law.* Every person who knowingly sells or offers for sale, or delivers or offers to deliver, any oleomargarine in any other form than in new wooden, tin-plate, or paper packages, as described in section 4594 (a) and (b), or who packs in any package any oleomargarine in any manner contrary to law, or who falsely brands any package or affixes a stamp on any package denoting a less amount of tax than that required by law shall be fined for each offense not more than \$1,000, and be imprisoned not more than 2 years.

(b) *Removal or defacement of stamps, marks, or brands.* Any person who shall willfully remove or deface the stamps, marks, or brands on a package containing oleomargarine or adulterated butter, taxed as provided by subchapter F of chapter 38, or subchapter C of chapter 39, respectively, shall be guilty of a misdemeanor, and shall be punished by a fine of not less than \$100 nor more than \$2,000, and by imprisonment for not less than 30 days nor more than 6 months.

(c) *Failure of wholesale dealers to keep or permit inspection of books, or to render returns.* Any person who willfully violates any of the provisions of section 4597 (a) shall for each such offense be fined not less than \$50 and not exceeding \$500, and imprisoned not less than 30 days nor more than 6 months.

(d) *Imported oleomargarine or adulterated butter—(1) Failure of customs officer to comply with law.* Every officer or employee of the Treasury Department having duties under section 4591 who permits any imported oleomargarine or adulterated butter to pass out of his custody or control without compliance by the owner or importer thereof with the provisions of section 4591 relating thereto, shall be fined not less than \$1,000 nor more than \$5,000, and imprisoned not less than 6 months nor more than 3 years.

(2) *Empty packages—(A) Failure to destroy stamps.* Any person who willfully neglects or refuses to destroy utterly the stamps on any empty package which contained oleomargarine or adulterated butter, or filled cheese shall for each such offense be fined not exceeding \$50, and imprisoned not less than 10 days nor more than 6 months; and

(B) *Trafficking.* Any person who fraudulently gives away or accepts from another, or who sells, buys, or uses for packing oleo-

margarine or adulterated butter, any such stamped package shall for each such offense be fined not exceeding \$100, and be imprisoned not more than 1 year.

(3) *Sale when improperly packed or stamped.* Every person who sells or offers for sale any imported oleomargarine or adulterated butter, or oleomargarine or adulterated butter purporting or claimed to have been imported, not put up in packages and stamped as provided by subchapter F of chapter 38 or subchapter C of chapter 39, shall be fined not less than \$500 nor more than \$5,000, and be imprisoned not less than 6 months nor more than 2 years.

(4) *Fraud by importer.* Whenever any person importing oleomargarine defrauds, or attempts to defraud, the United States of the tax on the oleomargarine imported by him, or any part thereof, he shall be fined not less than \$500 nor more than \$5,000, and shall be imprisoned not less than 6 months nor more than 3 years.

[Sec. 7234 as originally enacted and in effect July 1, 1960]

**§ 45.7234-1 Violations of laws relating to oleomargarine or adulterated butter operations.**

Except for imported oleomargarine, section 7234 has no application in respect of any transactions involving oleomargarine which occurs on or after the effective date of the regulations in this part.

**§ 45.7235 Statutory provisions; violation of laws relating to adulterated butter and process or renovated butter.**

SEC. 7235. *Violation of laws relating to adulterated butter and process or renovated butter—(a) Adulterated butter—False branding, sale, packing, or stamping in violation of law.* Every person who knowingly sells or offers for sale, or delivers or offers to deliver, any adulterated butter in any other form than in new wooden, tin-plate, or paper packages as described in section 4815 (a), or who packs in any package any adulterated butter in any manner contrary to law, or who falsely brands any package or affixes a stamp on any package denoting a less amount of tax than that required by law, shall be fined for each offense not more than \$1,000, and be imprisoned not more than 2 years.

(b) *Failure of wholesale dealers to keep or permit inspection of books, or to render returns.* Any person who willfully violates any of the provisions of section 4815 (b) shall for each such offense be fined not less than \$50 and not exceeding \$500, and imprisoned not less than 30 days nor more than 6 months.

(c) *Failure to comply with provisions relating to the manufacture, storage, and marking of process or renovated butter.* Any person, firm, or corporation violating any of the provisions of section 4817 shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not more than \$1,000, or by imprisonment for not more than 6 months, or by both such fine and imprisonment, in the discretion of the court.

(d) *Dealers in adulterated butter.* Every person who carries on the business of a dealer in adulterated butter without having paid the special tax therefor, as required by law, shall, besides being liable to the payment of the tax, be fined not less than \$50 nor more than \$500 for each offense.

(e) *Fraud by manufacturer.* Whenever any person manufacturing adulterated butter defrauds, or attempts to defraud, the United States of the tax on the adulterated butter manufactured by him, or any part thereof, he shall be fined not less than \$500

nor more than \$5,000, and shall be imprisoned not less than 6 months nor more than 3 years.

[Sec. 7235 as originally enacted and in effect July 1, 1960]

**§ 45.7236 Statutory provisions; violation of laws relating to filled cheese.**

SEC. 7236. *Violation of laws relating to filled cheese—False branding, sale, packing, or stamping in violation of law.* Every person who knowingly sells or offers to sell, or delivers or offers to deliver, filled cheese in any other form than in new wooden or paper packages, marked and branded as provided for and described in section 4834 (b), or who packs in any package or packages filled cheese in any manner contrary to law, or who falsely brands any package or affixes a stamp on any package denoting a less amount of tax than that required by law, shall upon conviction thereof be fined for each and every offense not less than \$50 and not more than \$500, or be imprisoned not less than 30 days nor more than 1 year.

[Sec. 7236 as originally enacted and in effect July 1, 1960]

**§ 45.7239 Statutory provisions; violations of laws relating to white phosphorus matches.**

SEC. 7239. *Violations of laws relating to white phosphorus matches—(a) Selling unstamped matches.* Any manufacturer of matches who manufactures, sells, removes, distributes, or offers to sell or distribute, white phosphorus matches without there being affixed thereto an adhesive stamp, denoting the tax required by subchapter B of chapter 39 effectively canceled as provided by section 4804 (a) (2), shall, for each offense, be guilty of a felony and, upon conviction thereof, shall be fined not more than \$1,000, or imprisoned not more than 2 years, or both.

(b) *Use of insufficient stamps.* Every person who affixes a stamp on any package of white phosphorus matches denoting a less amount of tax than that required by law shall, for each offense, be guilty of a felony and, upon conviction thereof, shall be fined not more than \$1,000, or imprisoned not more than 2 years, or both.

[Sec. 7239 as originally enacted and in effect July 1, 1960]

**§ 45.7263 Statutory provisions; penalties relating to cotton futures.**

SEC. 7263. *Penalties relating to cotton futures—(a) Withholding information.* Any person engaged in the business of dealing in cotton who shall, within a reasonable time prescribed by the Secretary of Agriculture or any agent acting under his instructions, willfully fail or refuse to answer questions or to produce books, letters, papers, or documents, as required under section 4862 (b), or who shall willfully give any answer that is false or misleading, shall, upon conviction thereof, be fined not more than \$500.

(b) *Civil penalties.* In addition to the criminal penalties provided by section 7233, there shall be imposed, on account of each violation of subchapter D of chapter 39, relating to cotton futures, a penalty of \$2,000, to be recovered in a civil action founded on subchapter D of chapter 39 in the name of the United States as plaintiff, and when so recovered one-half of said amount shall be paid over to the person giving the information upon which such recovery was based. It shall be the duty of United States attorneys, to whom satisfactory evidence of violations of subchapter D of chapter 39 is furnished, to institute and prosecute actions for the recovery of the penalties prescribed by this subsection.

[Sec. 7263 as originally enacted and in effect July 1, 1960]

**§ 45.7264 Statutory provisions; offenses relating to renovated or adulterated butter.**

Sec. 7264. *Offenses relating to renovated or adulterated butter.* Every person who carries on the business of a manufacturer of process or renovated butter or adulterated butter without having paid the special tax therefor, as required by law, shall, besides being liable to the payment of the tax, be fined not less than \$1,000 nor more than \$5,000.

[Sec. 7264 as originally enacted and in effect July 1, 1960]

**§ 45.7265 Statutory provisions; other offenses relating to oleomargarine or adulterated butter operations.**

Sec. 7265. *Other offenses relating to oleomargarine or adulterated butter operations.*

(a) *Omission or removal of label.* (1) \* \* \*

(2) Every manufacturer of adulterated butter who neglects to affix the label required under section 4814(a)(1) to any package containing adulterated butter made by him, or sold or offered for sale for or by him, and every person who removes any such label so affixed from any such package shall be fined \$50 for each package in respect to which such offense is committed.

(b) *Purchasing when not properly branded or stamped.* Every person who knowingly purchases or receives for sale any oleomargarine or adulterated butter which has not been branded or stamped according to law shall be liable to a penalty of \$50 for each such offense.

(c) *Other offenses.* If any manufacturer of oleomargarine or adulterated butter, any dealer therein or any importer or exporter thereof shall knowingly or willfully omit, neglect, or refuse to do, or cause to be done, any of the things required by law in the carrying on or conducting of his business, or shall do anything prohibited by subchapter F of chapter 38 or subchapter C of chapter 39, if there be no specific penalty or punishment imposed by any other provision of this chapter or chapter 68 for the neglecting, omitting, or refusing to do, or for the doing or causing to be done, the things required or prohibited, he shall pay a penalty of \$1,000.

[Sec. 7265 as originally enacted and in effect July 1, 1960]

**§ 45.7265-1 Other offenses relating to oleomargarine or adulterated butter operations.**

Except for imported oleomargarine, section 7265 has no application in respect of any transactions involving oleomargarine which occurs on or after the effective date of the regulations in this part.

**§ 45.7266 Statutory provisions; offenses relating to filled cheese.**

Sec. 7266. *Offenses relating to filled cheese.*—(a) *Failure to pay special tax.* Every person, firm, or corporation—

(1) *Manufacturers.* Who carries on the business of a manufacturer of filled cheese without having paid the special tax therefor, as required by law, shall, besides being liable to the payment of the tax, be fined not less than \$400 nor more than \$3,000; and

(2) *Wholesale dealers.* Who carries on the business of a wholesale dealer in filled cheese without having paid the special tax therefor, as required by law, shall, besides being liable to the payment of the tax, be fined not less than \$250 nor more than \$1,000; and

(3) *Retail dealers.* Who carries on the business of a retail dealer in filled cheese without having paid the special tax therefor, as required by law, shall, besides being liable for the payment of the tax, be fined not less than \$40 nor more than \$500 for each and every offense.

(b) *Other offenses.* Any manufacturer of filled cheese who fails to comply with the provisions of section 4833 (b) and (c), or with the regulations therein authorized, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than \$500 nor more than \$1,000.

(c) *Failure of wholesale and retail dealers to display signs.* Any wholesale or retail dealer in filled cheese who fails or neglects to comply with the provisions of section 4834(a) shall be deemed guilty of a misdemeanor, and shall on conviction thereof be fined for each and every offense not less than \$50 and not more than \$200.

(d) *Omission or removal of label.* Every manufacturer of filled cheese who neglects to affix the label provided for in section 4833(a)(2) to any package containing filled cheese made by him or sold or offered for sale by or for him, and every person who removes any such label so affixed from any such package, shall be fined \$50 for each package in respect to which such offense is committed.

(e) *Purchasing when special tax not paid.* Every person who knowingly purchases or receives for sale any filled cheese from any manufacturer or importer who has not paid the special tax provided for in section 4841 shall be liable, for each offense, to a penalty of \$100.

(f) *Purchasing when not stamped, branded, or marked according to law.* Any person who knowingly purchases or receives for sale any filled cheese which has not been branded or stamped according to law, or which is contained in packages not branded or marked according to law, shall be liable to a penalty of \$50 for each such offense.

[Sec. 7266 as originally enacted and in effect July 1, 1960]

**§ 45.7267 Statutory provisions; offenses relating to white phosphorus matches.**

Sec. 7267. *Offenses relating to white phosphorus matches.*—(a) *Exportation of matches.* Any person guilty of violation of section 4805(b) shall be fined not less than \$1,000 and not more than \$5,000.

(b) *Offenses not specifically covered.* If any manufacturer of white phosphorus matches, or any importer or exporter of matches, shall omit, neglect, or refuse to do or cause to be done any of the things required by law in carrying on or conducting his business, or shall do anything prohibited by subchapter B of chapter 39, if there be no specific penalty or punishment imposed by any other provision of this chapter or chapter 68 for the neglecting, omitting, or refusing to do, or for the doing or causing to be done, the thing required or prohibited, he shall be fined \$1,000 for each offense.

(c) *Omission of label from packages.* Every manufacturer of white phosphorus matches who neglects to affix the label required by section 4804(a)(4) to any original package containing stamped packages of white phosphorus matches made by him or sold or removed by or for him, and every person who removes any such label so affixed from any such original package, shall be fined not more than \$50 for each package in respect of which such offense is committed.

(d) *Omission of factory number from packages.* Every manufacturer of white phosphorus matches who omits to mark, brand, affix, stamp, or print the factory number required under section 4804(b) on every

package of white phosphorus matches manufactured, sold, or removed by him shall be fined not more than \$50 for each package in respect of which such offense is committed.

[Sec. 7267 as originally enacted and in effect July 1, 1960]

**§ 45.7271 Statutory provisions; penalties for offenses relating to stamps.**

Sec. 7271. *Penalties for offenses relating to stamps.* Any person who with respect to any tax payable by stamps—

(1) *Failure to attach or cancel stamps, etc.* Fails to comply with rules or regulations prescribed pursuant to section 6804 (relating to attachment, cancellation, etc., of stamps), unless such failure is shown to be due to reasonable cause and not willful neglect; or

(2) *Manufacture or offer for sale.* Manufactures or imports and sells, or offers for sale, or causes to be manufactured or imported and sold, or offered for sale, any playing cards, package, or other article without the full amount of tax being duly paid; or

(3) *Instruments.* Makes, signs, issues, or accepts, or causes to be made, signed, issued, or accepted, any instrument, document, or paper of any kind or description whatsoever without the full amount of tax thereon being duly paid; or

(4) *Disposal and receipt of stamped packages.* In the case of any container which is stamped, branded, or marked (whether or not under authority of law) in such manner as to show that the provisions of the internal revenue laws with respect to the contents or intended contents thereof have been complied with, and which is empty or contains any contents other than contents therein when the container was lawfully stamped, branded, or marked—

(A) Transfers or receives (whether by sale, gift, or otherwise) such container knowing it to be empty or to contain such other contents; or

(B) Stamps, brands, or marks such container, or otherwise produces such a stamped, branded, or marked container, knowing it to be empty or to contain such other contents;

shall be liable for each such offense to a penalty of \$50.

[Sec. 7271 as originally enacted and in effect July 1, 1960]

**§ 45.7272 Statutory provisions; penalty for failure to register.**

Sec. 7272. *Penalty for failure to register.*—(a) *In general.* Any person (other than persons required to register under subtitle E, or persons engaging in a trade or business on which a special tax is imposed by such subtitle) who fails to register with the Secretary or his delegate as required by this title or by regulations issued thereunder shall be liable to a penalty of \$50.

(b) *Cross references.* For provisions relating to persons required by this title to register, see sections \* \* \* 4455, \* \* \* 4804(d), and 7011.

[Sec. 7272 as amended and in effect July 1, 1960]

**§ 45.7273(a) Statutory provisions; penalties for offenses relating to special taxes; general rule.**

Sec. 7273. *Penalties for offenses relating to special taxes.*—(a) *General rule.* Any person who shall fail to place and keep stamps denoting the payment of the special tax as provided in section 6806 (a) or (b) (whichever is applicable) shall be liable to a penalty equal to the special tax for which his business rendered him liable (unless such failure is shown to be due to reasonable cause); but in no case shall said penalty be less than \$10. Where the failure

to comply with the provisions of section 6806 (a) or (b) shall be through willful neglect or refusal, then the penalty shall be double the amount above prescribed. Nothing in this subsection shall in any way affect the liability of any person for exercising or carrying on any trade, business, or profession, or doing any act for the exercising, carrying on, or doing of which a special tax is imposed by law, without the payment thereof.

[Sec. 7273(a) as originally enacted and in effect July 1, 1960]

**§ 45.7274 Statutory provisions; penalty for offenses relating to white phosphorus matches.**

SEC. 7274. *Penalty for offenses relating to white phosphorus matches.* Any manufacturer of white phosphorus matches who omits to mark, brand, affix, stamp, or print the factory number required under section 4804(b) on every package of white phosphorus matches manufactured, sold, or removed by him shall be liable to a penalty of \$50 for each package in respect of which such offense is committed.

[Sec. 7274 as originally enacted and in effect July 1, 1960]

**§ 45.7303 Statutory provisions; other property subject to forfeiture.**

SEC. 7303. *Other property subject to forfeiture.* There may be seized and forfeited to the United States the following:

(1) *Counterfeit stamps.* Every stamp involved in the offense described in section 7208 (relating to counterfeit, reused, cancelled, etc., stamps), and the vellum, parchment, document paper, package, or article upon which such stamp was placed or impressed in connection with such offense.

[(2) Repealed.]

(3) *Offenses by manufacturer or importer of or wholesale dealer in oleomargarine or adulterated butter.* All oleomargarine or adulterated butter owned by any manufacturer or importer of or wholesale dealer in oleomargarine or adulterated butter, or in which he has any interest as owner, if he shall knowingly or willfully omit, neglect, or refuse to do, or cause to be done, any of the things required by law in the carrying on or conducting of his business, or if he shall do anything prohibited by subchapter F of chapter 38, or subchapter C of chapter 39.

(4) *Purchase or receipt of filled cheese or adulterated butter.* All articles of filled cheese or adulterated butter (or the full value thereof) knowingly purchased or received by any person from any manufacturer or importer who has not paid the special tax provided in section 4821 or 4841.

(5) *Packages of oleomargarine or filled cheese.* All packages of oleomargarine or filled cheese subject to the tax under subchapter F of chapter 38, or part II of subchapter C of chapter 39, whichever is applicable, that shall be found without the stamps or marks provided for in the applicable subchapter or part thereof.

(6) *White phosphorus matches.* (A) All packages of white phosphorus matches subject to tax under subchapter B of chapter 39 and found without the stamps required by subchapter B of chapter 39.

(B) All the white phosphorus matches owned by any manufacturer of white phosphorus matches, or any importer or exporter of matches, or in which he has any interest as owner if he shall omit, neglect, or refuse to do or cause to be done any of the things required by law in carrying on or conducting his business, or shall do anything prohibited by subchapter B of chapter 39, if there be no specific penalty or punishment imposed by any other provision of subchapter B of chapter 39 for the neglecting, omitting, or refus-

ing to do, or for the doing or causing to be done, the thing required or prohibited.

(7) *False stamping of packages.* Any container involved in the offense described in section 7271 (relating to disposal of stamped packages), and of the contents of such container.

(8) *Fraudulent bonds, permits, and entries.* All property to which any false or fraudulent instrument involved in the offense described in section 7207 relates.

[Sec. 7303 as amended and in effect July 1, 1960]

**§ 45.7326(a) Statutory provisions; disposals of forfeited or abandoned property in special cases.**

SEC. 7326. *Disposal of forfeited or abandoned property in special cases—*(a) *Coin-operated gaming devices.* Any coin-operated gaming device as defined in section 4462(a) (2) upon which a tax is imposed by section 4461 and which has been forfeited under any provision of this title shall be destroyed, or otherwise disposed of, in such manner as may be prescribed by the Secretary or his delegate.

[Sec. 7326(a) as amended and in effect July 1, 1960]

**§ 45.7328 Statutory provisions; confiscation of matches exported.**

SEC. 7328. *Confiscation of matches exported.* Any white phosphorus matches exported or attempted to be exported shall be confiscated to the United States and destroyed in such manner as may be prescribed by the Secretary or his delegate.

[Sec. 7328 as originally enacted and in effect July 1, 1960]

**§ 45.7492 Statutory provisions; enforceability of cotton futures contracts.**

SEC. 7492. *Enforceability of cotton futures contracts.* No contract of sale of cotton for future delivery mentioned in section 4851(a), which does not conform to the requirements of section 4853 and has not the necessary stamps affixed thereto as required by section 4871, shall be enforceable in any court of the United States by, or on behalf of, any party to such contract or his privies.

[Sec. 7492 as originally enacted and in effect July 1, 1960]

**§ 45.7493 Statutory provisions; immunity of witnesses in cases relating to cotton futures.**

SEC. 7493. *Immunity of witnesses in cases relating to cotton futures.* No person whose evidence is deemed material by the officer prosecuting on behalf of the United States in any case brought under any provision of subchapter D of chapter 39 (relating to cotton futures) shall withhold his testimony because of complicity by him in any violation of subchapter D of chapter 39, or of any regulation made pursuant to such chapter, but any such person called by such officer who testifies in such case shall be exempt from prosecution for any offense to which his testimony relates.

[Sec. 7493 as originally enacted and in effect July 1, 1960]

**§ 45.7510 Statutory provisions; exemption from tax of domestic goods purchased for the United States.**

SEC. 7510. *Exemption from tax of domestic goods purchased for the United States.* The privilege existing by provision of law on December 1, 1873, or thereafter of purchasing supplies of goods imported from foreign countries for the use of the United States, duty free, shall be extended, under such regulations as the Secretary or his delegate may prescribe, to all articles of domestic produc-

tion which are subject to tax by the provisions of this title.

[Sec. 7510 as originally enacted and in effect July 1, 1960]

**§ 45.7510-1 Withdrawal of filled cheese and playing cards from factories, free of tax, for use of the United States.**

Section 7510 provides for the withdrawal of filled cheese and playing cards from factories, free of tax, for the use of the United States. Withdrawals for the purpose of sale by Federal agencies are not for the use of the United States within the meaning of the statute. Institutions owned or controlled by the governments of the several States or the District of Columbia are not entitled to make withdrawals under section 7510.

**§ 45.7510-2 Evidence required to establish exemption.**

(a) *Exemption certificates.* To establish the right to remove filled cheese or playing cards tax free under section 7510, the manufacturer must obtain from an authorized officer of an agency of the United States, and retain in his possession a properly executed exemption certificate in the form prescribed in paragraph (c) of this section.

(b) *Frequency of certificates.* Where only occasional tax free removals from the place of manufacture for use of the United States are made, a separate exemption certificate should be furnished for each order. However, where removals are regular or frequently made, a certificate covering all orders for a specific period not to exceed 4 calendar quarters will be acceptable. Such certificates and proper records of invoices, orders, etc., relative to tax-free removals must be retained by the manufacturer and shall at all times be readily accessible for inspection by internal revenue officers and retained as provided in paragraph (d) of § 45.6001-1. If the records with respect to any removal claimed to be tax free do not include a proper certificate, with supporting invoices and such other evidence as may be necessary to establish the exempt character of the removal, the tax is payable on such removal.

(c) *Form of certificate.* The following form of exemption certificate will be acceptable for purposes of this section and must be adhered to in substance:

**EXEMPTION CERTIFICATE**

(To support tax-free removals of filled cheese or playing cards for the use of the United States under provisions of section 7510 of the Internal Revenue Code of 1954.)

-----, 19--

(Date)

The undersigned hereby certifies that he is ----- of

(Title of officer)

-----; that he is (Agency of the United States.)

authorized to execute this certificate; and that the article or articles specified in the accompanying order or on the reverse side hereof are purchased from -----

(Name of vendor)

for the exclusive use of ----- of (Government unit)

the United States.

It is understood that the exemption from tax in the case of removals of articles under this exemption certificate for the United

States is limited to the removal of articles for its *exclusive use*. The undersigned understands that if articles purchased tax free under this exemption certificate are used otherwise or are sold to employees or others, such fact will be promptly reported to the manufacturer, producer, or importer of the article or articles covered by this certificate. It is also understood that the fraudulent use of this certificate for the purpose of securing this exemption will subject the undersigned and all guilty parties to a fine of not more than \$10,000, or to imprisonment for not more than 5 years, or both, together with costs of prosecution.

-----  
(Signature)

-----  
(Address)

#### § 45.7510-3 Branding.

(a) Each individual pack of playing cards shall be labeled or branded, "For use of U.S. Government". The letters of such printing shall be conspicuous, in boldfaced type of not less than one-quarter of an inch in height.

(b) Each statutory package of filled cheese, as required by § 45.4833-1, shall, in addition to the markings otherwise required, have legibly and durably marked, stamped, or branded thereon the statement, "For use of U.S. Government", the letters therein to correspond in size and style with the markings required by paragraph (b) of § 45.4833-1.

#### § 45.7641 Statutory provisions; supervision of operations of certain manufacturers.

SEC. 7641. *Supervision of operations of certain manufacturers.* Every manufacturer of filled cheese, oleomargarine, \* \* \* process or renovated butter or adulterated butter, or white phosphorus matches shall conduct his business under such surveillance of officers or employees of the Treasury Department as the Secretary or his delegate may by regulations require.

[Sec. 7641 as originally enacted and in effect July 1, 1960]

#### § 45.7641-1 Inapplicability.

Section 7641 has no application in respect of any transaction involving oleomargarine which occurs on or after the effective date of the regulations in this part.

#### § 45.7701 Statutory provisions; definitions.

SEC. 7701. *Definitions.* (a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof—

(1) *Person.* The term "person" shall be construed to mean and include an individual, a trust, estate, partnership, association, company or corporation.

(2) *Partnership and partner.* The term "partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of this title, a trust or estate or a corporation; and the term "partner" includes a member in such a syndicate, group, pool, joint venture, or organization.

(3) *Corporation.* The term "corporation" includes associations, joint-stock companies, and insurance companies.

(4) *Domestic.* The term "domestic" when applied to a corporation or partnership means created or organized in the United

States or under the law of the United States or any State or Territory.

(5) *Foreign.* The term "foreign" when applied to a corporation or partnership means a corporation or partnership which is not domestic.

(6) *Fiduciary.* The term "fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person.

(9) *United States.* The term "United States" when used in a geographical sense includes only the States, the Territory of Hawaii, and the District of Columbia.

(10) *State.* The term "State" shall be construed to include the Territory of Hawaii and the District of Columbia, where such construction is necessary to carry out provisions of this title.

(11) *Secretary.* The term "Secretary" means the Secretary of the Treasury.

(12) *Delegate.* The term "Secretary or his delegate" means the Secretary of the Treasury, or any officer, employee, or agency of the Treasury Department duly authorized by the Secretary (directly, or indirectly by one or more redelegations of authority) to perform the function mentioned or described in the context, and the term "or his delegate" when used in connection with any other official of the United States shall be similarly construed.

(13) *Commissioner.* The term "Commissioner" means the Commissioner of Internal Revenue.

(14) *Taxpayer.* The term "taxpayer" means any person subject to any internal revenue tax.

(28) *Other terms.* Any term used in this subtitle with respect to the application of, or in connection with, the provisions of any other subtitle of this title shall have the same meaning as in such provisions.

(29) *Internal Revenue Code.* The term "Internal Revenue Code of 1954" means this title, and the term "Internal Revenue Code of 1939" means the Internal Revenue Code enacted February 10, 1939, as amended.

(b) *Includes and including.* The terms "includes" and "including" when used in a definition contained in this title shall not be deemed to exclude other things otherwise within the meaning of the term defined.

(c) *Commonwealth of Puerto Rico.* Where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, references in this title to possessions of the United States shall be treated as also referring to the Commonwealth of Puerto Rico.

(d) *Cross references.*—(1) Other definitions. For other definitions, see the following sections of Title 1, of the United States Code:

(1) Singular as including plural, section 1.

(2) Plural as including singular, section 1.

(3) Masculine as including feminine, section 1.

(4) Officer, section 1.

(5) Oath as including affirmation, section 1.

(6) County as including parish, section 2.

(7) Vessel as including all means of water transportation, section 3.

(8) Vehicle as including all means of land transportation, section 4.

(9) Company or association as including successors and assigns, section 5.

(2) *Effect of cross references.* For effect of cross references in this title, see section 7806(a).

[Sec. 7701 as amended and in effect July 1, 1960]

#### § 45.7805 Statutory provisions; rules and regulations.

SEC. 7805. *Rules and regulations.*—(a) *Authorization.* Except where such authority is expressly given by this title to any person other than an officer or employee of the Treasury Department, the Secretary or his delegate shall prescribe all needful rules and regulations for the enforcement of this title including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue.

(b) *Retroactivity of regulations or rulings.* The Secretary or his delegate may prescribe the extent, if any, to which any ruling or regulations, relating to the internal revenue laws, shall be applied without retroactive effect.

(c) *Preparation and distribution of regulations, forms, stamps, and other matters.* The Secretary or his delegate shall prepare and distribute all the instructions, regulations, directions, forms, blanks, stamps, and other matters pertaining to the assessment and collection of internal revenue.

[Sec. 7805 as originally enacted and in effect July 1, 1960]

#### § 45.7805-1 Promulgation of regulations.

In pursuance of section 7805 of the Internal Revenue Code of 1954, the foregoing regulations are hereby prescribed. (See § 45.0-3 relating to the scope of the regulations.)

[F.R. Doc. 60-6654; Filed, July 15, 1960; 8:51 a.m.]

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### [ 7 CFR Part 992 ]

### IRISH POTATOES GROWN IN THE STATE OF WASHINGTON

#### Notice of Proposed Expenses and Rate of Assessment

Notice is hereby given that the Secretary of Agriculture is considering the approval of the expenses and rate of assessment hereinafter set forth, which were recommended by the State of Washington Potato Committee, established pursuant to Marketing Agreement No. 113 and Order No. 92 (7 CFR Part 992), regulating the handling of Irish potatoes grown in the State of Washington, issued under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

Consideration will be given to any data, views, or arguments pertaining thereto, which are filed with the Director, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, Washington 25, D.C., not later than 15 days following publication of this notice in the FEDERAL REGISTER.

The proposals are as follows:

#### § 992.212 Expenses and rate of assessment.

(a) The reasonable expenses that are likely to be incurred by the State of Washington Potato Committee, established pursuant to Marketing Agreement No. 113 and Order No. 92, to enable such

committee to perform its functions pursuant to the provisions of the marketing agreement and order, during the fiscal year ending May 31, 1961, will amount to \$24,113.00.

(b) The rate of assessment to be paid by each handler, pursuant to Marketing Agreement No. 113 and Order No. 92, shall be three-eighths of one cent (\$.00375) per hundredweight of potatoes handled by him, as the first handler thereof, during the fiscal year.

(c) The terms used in this section shall have the same meaning as when used in said marketing agreement and order.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: July 13, 1960.

FLOYD F. HEDLUND,  
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 60-6624; Filed, July 15, 1960; 8:47 a.m.]

## DEPARTMENT OF LABOR

Bureau of Employment Security

[20 CFR Parts 602, 604.]

### UNITED STATES EMPLOYMENT SERVICE

#### Referral of Agricultural Workers in Labor Dispute Situations

Agricultural employers have requested more time to prepare their case for the proposal to amend 20 CFR 602.2(b) and 604.1(i) published in the *FEDERAL REGISTER* July 8, 1960 (25 F.R. 6442). As the representatives of their employees are content with the regulations without amendment, this request will be granted. The change of time will require, however, a changed place and a different Hearing Examiner. Accordingly, the proposal of July 8, 1960, is hereby revoked, and the present notice is substituted in its place.

A series of labor disputes in agriculture is now in progress in California. Regulations governing the cooperation of the United States Employment Service and States in establishing and maintaining a national system of public employment offices (20 CFR Part 602) provide:

§ 602.2 Placement services. \* \* \*

(b) No person shall be referred to a position the filling of which will aid directly or indirectly in filling a job which (1) is vacant because the former occupant is on strike or is being locked out in the course of a labor dispute, or (2) the filling of which is an issue in a labor dispute. With respect to positions not covered by subparagraph (1) or (2) of this paragraph, any individual may be referred to a place of employment in which a labor dispute exists, provided he is given written notice of such dispute prior to or at the time of his referral.

Identical provision is made in expressing the policies of the United States Employment Service (20 CFR 604.1(i)).

Agricultural employers actually or potentially involved in these disputes have complained that the prohibition against

referrals in these regulations operates unfairly to their disadvantage, because of the perishable nature of their product and the lack of a permanent labor force on any single farm sufficient to harvest its crop. They request that the prohibition be revoked or curtailed insofar as it applies to agriculture. Representatives of the agricultural employees involved have responded, however, that any such revocation or curtailment would involve use of the employment service to recruit strike breakers. Sharply conflicting factual descriptions of the precise way these regulations operate in such disputes have been presented by the contending groups. I have concluded that each of them and any other person who has an interest should be given an opportunity to hear, examine, and respond to the presentation of the others in proceedings so expedited that any relief demonstrated to be necessary can be granted in season to be effective.

Accordingly, under the authority of section 12, 48 Stat. 117, as amended; 29 U.S.C. 49k, and in accordance with section 4(b) of the Administrative Procedure Act (5 U.S.C. 1003(b)), notice is hereby given that any interested person may appear before Hearing Examiner E. West Parkinson at 10:00 a.m., e.d.t., August 8, 1960, in the North Room, Washington Hotel, Fifteenth Street and Pennsylvania Avenue, Northwest, Washington, D.C., to present orally data, views, and argument on the question whether the prohibition against referrals in labor dispute situations expressed in 20 CFR 602.2(b) and 604.1(i) should be revoked or curtailed insofar as it applies to agricultural employment.

Every interested person shall have the right to present his data by oral or documentary evidence, to submit such rebuttal evidence and to conduct such cross examination as may be required for a full and true disclosure of the facts. Any interested person who cannot appear in person may submit such data, views, and argument in writing (4 copies) to the Chief Hearing Examiner, United States Department of Labor, 14th Street and Constitution Avenue NW., Washington, D.C., not later than August 3, 1960, where they will be kept available for examination during usual business hours by any other interested person. Oral presentations shall be reported and transcripts will be made available upon request to any interested person on such terms as the Hearing Examiner may provide.

The Hearing Examiner shall have the authority and the duty to administer oaths and affirmations, rule upon offers of proof and receive relevant evidence, regulate the course of the hearing, and dispose of procedural requests or similar matters. Opportunity shall be granted any interested person at the close of the hearing to comment orally on the record as a whole, but provision will not be made to keep the record open for subsequent comment. As soon as the transcription of oral evidence and argument is made, it, together with such written exhibits as may be received in evidence and written submissions filed as hereinabove pro-

vided, shall be certified to the Secretary of Labor for final decision without any proposed or tentative findings, conclusions, or recommendations. The Secretary will give careful consideration to all relevant matter thus presented, together with such other information as may be available to him and will make such amendment to 20 CFR 602.2(b) and 604.1(i) as he may determine to be appropriate.

Signed at Washington, D.C., this 15th day of July 1960.

JAMES T. O'CONNELL,  
Acting Secretary of Labor.

[F.R. Doc. 60-6751; Filed, July 15, 1960; 11:51 a.m.]

## FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 3.]

[Docket No. 13608; FCC 60-815]

### TABLE OF ASSIGNMENTS, TELEVISION BROADCAST STATIONS

Bakersfield, Delano, Lompoc-Santa Maria, San Luis Obispo, Santa Barbara, and Santa Maria, California

1. This proceeding was initiated by a Notice of Proposed Rule Making adopted June 23, 1960, in which interested parties were invited to comment on a series of proposals affecting the deintermixture of Bakersfield by certain alternative dispositions of Channel 10, now assigned there, and by certain alternative proposals for the assignment of new UHF channels to Bakersfield. Among the alternative uses under consideration for Channel 10— are its assignment to:

(1) Santa Barbara.

(2) Santa Maria.

(3) Lompoc-Santa Maria (on a hyphenated basis).

(4) San Luis Obispo.

2. In a Report and Order adopted today (in Docket 11759), the Commission ordered the deletion of Channel 12+ from Fresno in the course of proceedings directed to the deintermixture of that television market. Since this action makes Channel 12+ available for possible assignment to Santa Barbara, Santa Maria, Lompoc-Santa Maria or San Luis Obispo—the same cities where the reassignment of Channel 10— is under consideration herein—we deem it desirable to consider the alternative uses of Channels 10— and 12+ in a consolidated proceeding (subject, of course, to any necessary clearances with the Government of Mexico) and to this end, we invite interested parties, herein, to file comments and reply comments on the foregoing possibilities for use of Channel 12+. We believe that proceeding in this manner will be most conducive to orderly consideration and decision of the best uses for these two channels.

3. A number of comments and reply comments filed in Docket 11759 in response to our further notice of proposed rule making, adopted in that proceeding on March 24, 1960, were directed to the

Commission's alternative proposal (set out in the aforementioned further notice) that Channel 12+ be reassigned from Fresno to Santa Barbara. Other comments filed in response to that further notice were directed to the possible use of Channel 12+ at Santa Maria or Lompoc-Santa Maria. Having decided to defer our decision concerning which reassignment of Channel 12+ would best serve the public interest until we have the benefit of comments on proposals for reassignment of Channel 10—, now assigned to Bakersfield, and to consolidate herein the matter of the reassignment of Channel 12+, we deem it appropriate to deal in the instant proceeding with the above-referenced comments filed in Docket 11759. Parties to this proceeding are hereby placed on notice of our

intention in this regard, so that in filing comments herein they may have appropriate opportunity to give attention to the above-mentioned pleadings which will be disposed of in this proceeding.

4. In the circumstances, it is appropriate to extend the dates for filing comments and reply comments in the instant proceeding. Accordingly, the last dates for filing comments and reply comments are extended to August 8, 1960, and August 22, 1960, respectively.

5. Comments and reply comments are to be filed pursuant to applicable procedures set out in § 1.213 of the rules. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments or other appropriate pleadings.

6. Authority for the instant actions is contained in sections 4 (i) and (j), 303 and 307(b) of the Communications Act of 1934, as amended.

7. In accordance with the provisions of § 1.54 of the Commission's rules an original and 14 copies of all statements, briefs, responses, or comments shall be filed with the Commission.

Adopted: July 7, 1960.

Released: July 13, 1960.

FEDERAL COMMUNICATIONS  
COMMISSION,  
[SEAL] BEN F. WAPLE,  
*Acting Secretary.*

[F.R. Doc. 60-6633; Filed, July 15, 1960;  
8:49 a.m.]

# Notices

## DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

### COTTON

#### Notice of Acquisition of 1959-Crop Loan

Notice is hereby given that Commodity Credit Corporation will acquire title at the close of business on August 1, 1960, to all 1959-crop loan cotton securing outstanding loans under Commodity Credit Corporation's 1959 Cotton Loan Program. Loans under the 1959 Cotton Loan Program mature on July 31, 1960. If the producer or the purchaser of his equity does not repay a loan before the close of business on August 1, 1960, Commodity Credit Corporation will acquire title to the cotton securing the loan and will not pay for any market value which the cotton may have in excess of the amount of the loan, plus interest and charges, in accordance with the provisions of the loan agreement. Any loan notes which are sent to local banks for collection at the request of producers or purchasers of equities must be paid at the local banks not later than the close of business on August 1. Any repayments made by mail must be received by Commodity Credit Corporation or the local bank not later than the close of business on August 1.

Issued this 12th day of July 1960.

CLARENCE D. PALMBY,  
*Acting Executive Vice President,*  
*Commodity Credit Corporation.*

[F.R. Doc. 60-6625; Filed, July 15, 1960;  
8:47 a.m.]

#### Office of the Secretary KANSAS AND TEXAS

#### Designation of Counties Within the Great Plains Area of the Ten Great Plains States Where the Great Plains Conservation Program Is Specifically Applicable

For the purpose of making contracts based upon an approved plan of farming operations pursuant to the Act of August 7, 1956 (70 Stat. 1115-1117), the following counties of the following States are designated as susceptible to serious wind erosion by reason of their soil types, terrain, and climatic and other factors.

KANSAS  
Ellis.  
Crockett.  
Irion.

TEXAS

Done at Washington, D.C., this 13th day of July 1960.

[SEAL] MARVIN L. McLAIN,  
*Acting Secretary.*

[F.R. Doc. 60-6628; Filed, July 15, 1960;  
8:48 a.m.]

## MASSACHUSETTS, NEW JERSEY, OREGON, WASHINGTON, AND WISCONSIN

#### Designation of Areas for Production Emergency Loans

For the purpose of making production emergency loans pursuant to section 2 (a) of Public Law 38, 81st Congress (12 U.S.C. 1148a-2(a)), as amended, it has been determined that in the States of Massachusetts, New Jersey, Oregon, Washington, and Wisconsin a 1959 production disaster has resulted in a continuing need for agricultural credit to cranberry growers not readily available from commercial banks, cooperative lending agencies, or other responsible sources.

Pursuant to the authority set forth above, production emergency loans will not be made in the above-named States after December 31, 1960, except to applicants who previously received such assistance and who can qualify under established policies and procedures.

Done at Washington, D.C., this 12th day of July 1960.

MARVIN L. McLAIN,  
*Acting Secretary.*

[F.R. Doc. 60-6620; Filed, July 15, 1960;  
8:47 a.m.]

## DEPARTMENT OF THE TREASURY

### Office of the Secretary

[T.D. 55173]

#### RYE, RYE FLOUR, AND RYE MEAL Amount of Quota for 12-Month Period Beginning July 1, 1960

JULY 11, 1960.

Pursuant to the provisions of Presidential Proclamation No. 3306, dated August 4, 1959 (T.D. 54914), I have determined that during the 12-month period beginning July 1, 1960, a total of 143,606,079 pounds of rye, rye flour, and rye meal may be entered for consumption or withdrawn from warehouse for consumption, of which not more than 11,575 pounds may be in the form of rye flour or rye meal.

Of the total quantity which may be entered, or withdrawn, for consumption during the year beginning July 1, 1960, not more than 140,733,957 pounds may be the product of Canada and not more than 2,872,122 pounds may be the product of other foreign countries.

[SEAL] A. GILMORE FLUES,  
*Acting Secretary of the Treasury.*

[F.R. Doc. 60-6655; Filed, July 15, 1960;  
8:51 a.m.]

## DEPARTMENT OF COMMERCE

Federal Maritime Board

### CHINA NAVIGATION CO., LTD, ET AL.

#### Notice of Agreements Filed for Approval

Notice is hereby given that the following described agreements have been filed with the Board for approval pursuant to section 15 of the Shipping Act, 1916 (39 Stat. 733, 46 U.S.C. 814):

(1) Agreement No. 8464, between The China Navigation Co., Ltd., and the United States Lines Co., covers and is restricted to transportation of asbestos under through bills of lading in the trade between ports in Point Samson in Western Australia and U.S. Atlantic Coast ports, with transshipment at the port of Hong Kong, B.C.C.

(2) Agreement No. 8466, between United States Lines Company and Polish Ocean Lines, covers a through billing arrangement in the trade between ports in the Portland, Maine/Key West, Florida range of the United States and Poland with transshipment at ports in the Bayonne/Hamburg/United Kingdom range.

(3) Agreement No. 8467, between United States Lines Company and Bugsier-Reederi u. Bergungs-A.G., covers a through billing arrangement in the trade between ports in the Portland, Maine/Key West, Florida range of the United States and Odense, with transshipment at ports in the Bayonne/Hamburg-United Kingdom range.

(4) Agreement No. 8469, between United States Lines Company and H. M. Gehrckens, covers a through billing arrangement in the trade between ports in the Portland, Maine/Key West, Florida range of the United States and Sweden, with transshipment at Hamburg.

(5) Agreement No. 8471, between the United States Lines Company and C. Clausen, Dampskibsfrederi A/S, covers a through billing arrangement in the trade between ports in the Portland, Maine/Key West, Florida range of the United States and Denmark, with transshipment at ports in the Bayonne/Hamburg/United Kingdom range.

(6) Agreement No. 8472, between the United States Lines Company and Mathies Reederei, KG., covers a through billing arrangement in the trade between ports in the Portland, Maine/Key West, Florida range of the United States and Sweden, with transshipment at ports in the Bayonne/Hamburg/United Kingdom range.

(7) Agreement No. 8473, between the United States Lines Company and Oldenburg-Portugiesische Dampfschiff-Rhederei Kusen Heitmann & Cie. KG., covers a through billing arrangement in the trade between ports in the Portland, Maine/Key West, Florida range of the

United States, and Spain, Portugal, Morocco, Algeria and Canary Islands, with transshipment at ports in the Bayonne/Hamburg/United Kingdom range.

(8) Agreement No. 8474, between the United States Lines Company and Dampfschiffahrts-Gesellschaft "Nep-tun", covers a through billing arrangement in the trade between ports in the Portland, Maine/Key West, Florida range of the United States and Western Norway, with transshipment at ports in the Bayonne/Hamburg/United Kingdom range.

(9) Agreement No. 8476, between the United States Lines Company and Dampfschiffahrts-Gesellschaft "Nep-tun", covers a through billing arrangement in the trade between ports in the Portland, Maine/Key West, Florida range of the United States and Spain and Portugal, with transshipment at ports in the Bayonne/Hamburg/United Kingdom range.

(10) Agreement No. 8477, between the United States Lines Company and Dampfschiffahrts-Gesellschaft "Nep-tun", covers a through billing arrangement in the trade between ports in the Portland, Maine/Key West, Florida range of the United States and Sweden, with transshipment at ports in the Bayonne/Hamburg/United Kingdom range.

(11) Agreement No. 8478, between the United States Lines Company and Ahlmann-Skandinavien-Linien, covers a through billing arrangement in the trade between ports in the Portland, Maine/Key West, Florida range of the United States and Denmark, with transshipment at ports in the Bayonne/Hamburg/United Kingdom range.

(12) Agreement No. 8479, between the United States Lines Company and Ahlmann-Skandinavien-Linien, covers a through billing arrangement in the trade between ports in Portland, Maine/Key West, Florida range of the United States and Sweden, with transshipment at ports in the Bayonne/Hamburg/United Kingdom range.

(13) Agreement No. 8481, between the United States Lines Company and Bremer Reederei Bruno Bischoff & Co. GMBH, covers a through billing arrangement in the trade between ports in the Portland, Maine/Key West, Florida range of the United States and Denmark, with transshipment at ports in the Bayonne/Hamburg/United Kingdom range.

(14) Agreement No. 8482, between the United States Lines Company and Bremer Reederei Bruno Bischoff & Co. GMBH, covers a through billing arrangement in the trade between ports in the Portland, Maine/Key West, Florida range of the United States and Sweden, with transshipment at ports in the Bayonne/Hamburg/United Kingdom range.

(15) Agreement No. 8483, between the United States Lines Company and Bremer Reederei Bruno Bischoff & Co. GMBH, covers a through billing arrangement in the trade between ports in the Portland, Maine/Key West, Florida range of the United States and Western Norway, with transshipment at ports in

the Bayonne/Hamburg/United Kingdom range.

(16) Agreement No. 8484, between the United States Lines Company and Bremer Reederei Bruno Bischoff & Co. GMBH, covers a through billing arrangement in the trade between ports in the Portland, Maine/Key West, Florida range of the United States and East Norway, with transshipment at ports in the Bayonne/Hamburg/United Kingdom range.

(17) Agreement No. 8498, between Jugoslavenska Linijska Plovba (Jugolinija) and Splosna Plovba, covers an arrangement for the scheduling of sailings for the transportation of cargo and passengers in the trade between ports of the United States and Canada and Mediterranean, Adriatic and North African ports.

Interested parties may inspect these agreements and obtain copies thereof at the Office of Regulations, Federal Maritime Board, Washington, D.C., and may submit, within 20 days after publication of this notice in the FEDERAL REGISTER, written statements with reference to any of these agreements and their position as to approval, disapproval, or modification, together with request for hearing should such hearing be desired.

Dated: July 13, 1960.

By order of the Federal Maritime Board.

JAMES L. PIMPER,  
Secretary.

[F.R. Doc. 60-6629; Filed, July 15, 1960;  
8:48 a.m.]

## SEA-LAND OF PUERTO RICO ET AL.

### Notice of Agreements Filed for Approval

Notice is hereby given that the following described agreements have been filed with the Board for approval pursuant to section 15 of the Shipping Act, 1916 (39 Stat. 733, 46 U.S.C. 814):

(1) Agreement No. 8502, between Sea-Land of Puerto Rico, Division of Sea-Land Services, Inc., and Osaka Shosen Kaisha, Ltd., covers a through billing arrangement in the trade from Korea, Formosa, the Philippines and Japan, including Hong Kong to Puerto Rico, with transshipment at New York.

(2) Agreement No. 8503, between Sea-Land of Puerto Rico, Division of Sea-Land Services, Inc., and the carriers comprising the Barber-Wilhelmsen Line joint service, covers a through billing arrangement in the trade from Japan, Hong Kong and Philippine Islands to Puerto Rico, with transshipment at New York.

(3) Agreement No. 8504, between Sea-Land of Puerto Rico, Division of Sea-Land Services, Inc., and American President Lines, Ltd., covers a through billing arrangement in the trade from Japan, China (including Honk Kong), Philippines, India, Federation of Malaya, Colony of Singapore, and Indonesia to Puerto Rico, with transshipment at New York.

(4) Agreement No. 8506, between Sea-Land of Puerto Rico, Division of Sea-Land Services, Inc., and American President Lines, Ltd., covers a through billing arrangement in the trade from France, Italy, and North Africa to Puerto Rico, with transshipment at New York.

(5) Agreement No. 8492, between T. F. Kollmar, Inc., doing business as Northland Freight Lines and Wagner Tug Boat Company, provides that Wagner will carry on its barges, to the extent excess space on deck is available, cargo booked by Kollmar for transportation between Seattle, Washington and Anchorage, Alaska. Gross ocean freight revenue on Kollmar's cargo is to be divided equally between Kollmar and Wagner.

Interested parties may inspect these agreements and obtain copies thereof at the Office of Regulations, Federal Maritime Board, Washington, D.C., and may submit, within 20 days after publication of this notice in the FEDERAL REGISTER, written statements with reference to any of these agreements and their position as to approval, disapproval, or modification, together with request for hearing should such hearing be desired.

Dated: July 13, 1960.

By order of the Federal Maritime Board.

JAMES L. PIMPER,  
Secretary.

[F.R. Doc. 60-6630; Filed, July 15, 1960;  
8:48 a.m.]

[Docket No. 882]

## UNAPPROVED SECTION 15 AGREEMENTS; SOUTH AFRICAN TRADE

### Notice of Supplemental Order

On June 27, 1960, the Federal Maritime Board entered the following supplemental order to its original order herein, dated January 7, 1960, appearing in the FEDERAL REGISTER of January 21, 1960 (25 F.R. 521), as amended by its order of January 15, 1960, appearing in the FEDERAL REGISTER of February 2, 1960 (25 F.R. 881):

Whereas the Board entered an Amended Order herein on January 15, 1960, naming certain respondents and posing for investigation, among other things, the issue of whether the said respondents entered into and carried out prior to Board approval under section 15, Shipping Act, 1916, agreements requiring such approval in violation of said section 15; and

Whereas subsequent to the entry of the above order, information has come before the Board indicating that the respondents herein may have entered into and carried out agreements fixing or regulating transportation rates or fares, controlling, regulating, preventing, or destroying competition; and providing for cooperative working arrangements with Baron Iino Line who was not named as a respondent in the above order;

Now therefore it is ordered, That the scope of this investigation is hereby enlarged to include the determination of the following issues:

1. Whether any or all of the respondents named in the Amended Order of January 15, 1960, herein and Baron Iino Line entered into and carried out prior to Board approval some time in 1958 and 1959 and continuing through the present time agreements fixing or controlling the freight rates for the movement of Liner Board, Kraft paper, Kraft wrapping paper and/or wrapping paper between ports in the United States and ports in South and East Africa in violation of section 15, Shipping Act, 1916.

2. Whether any or all of the respondents named in the said Amended Order and Baron Iino Line entered into and carried out prior to Board approval during the year 1959 and continuing through the present time agreements fixing or controlling the freight rates for the movement of Bulk Tallow between ports in the United States and ports in South and East Africa in violation of said section 15.

3. Whether any or all of the respondents named in the said Amended Order and Baron Iino Line entered into and carried out prior to Board approval during the year 1959 and continuing through the present time agreements fixing or controlling the freight rates for the movement of wool between ports in the United States and ports in South and East Africa in violation of said section 15.

*It is further ordered*, That said Baron Iino Line be, and it is hereby, made a respondent in this proceeding.

*It is further ordered*, That a copy of this order be served on each of the respondents and published in the FEDERAL REGISTER.

Dated: July 13, 1960.

By order of the Federal Maritime Board.

JAMES L. PIMPER,  
Secretary.

[F.R. Doc. 60-6631; Filed, July 15, 1960;  
8:48 a.m.]

### Office of the Secretary MISTAKES IN BIDS

#### Delegation of Authority To Make Administrative Determinations

1. Pursuant to authority vested in the Secretary of Commerce by law and by delegation from the Administrator of General Services, the Director, Office of Administrative Operations, is hereby authorized to exercise the authority of the Secretary of Commerce to make administrative determinations in connection with mistakes in bids under the provisions of Part 1-2.406-3 of the Federal Procurement Regulations.

2. This delegation of authority may not be redelegated.

3. Each proposed determination shall be approved by the Office of the General Counsel.

4. This delegation is effective as of July 1, 1960.

Dated: July 5, 1960.

FREDERICK H. MUELLER,  
Secretary of Commerce.

[F.R. Doc. 60-8623; Filed, July 15, 1960;  
8:47 a.m.]

## FEDERAL COMMUNICATIONS COMMISSION

### STATEMENT OF ORGANIZATION, DELEGATIONS OF AUTHORITY AND OTHER INFORMATION

In the matter of amendment of the Commission's Statement of Organization, Delegations of Authority, and Other Information for the purpose of making editorial changes therein.

The Commission having under consideration sections 0.404, 0.406, and 0.407 of its Statement of Organization, Delegations of Authority, and Other Information; and

It appearing that these sections should be amended to more accurately describe the FCC Service Frequency Lists, the procedure for obtaining copies of those Lists, and the availability of the Commission's frequency records; and

It further appearing that the amendments herein adopted pertain to Commission management, and that such amendments are editorial in nature, and hence that compliance with the public notice, procedural, and effective date requirements of section 4 of the Administrative Procedure Act is unnecessary; and

It further appearing that the amendments adopted herein are issued pursuant to authority contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, and section 0.341(a) of the Commission's Statement of Delegations and pursuant to the requirements of section 3 of the Administrative Procedure Act;

*It is ordered*, This 13th day of July 1960, That, effective July 25, 1960, the Commission's Statement of Organization, Delegations of Authority, and Other Information is amended as set forth below.

Released: July 13, 1960.

FEDERAL COMMUNICATIONS  
COMMISSION,

[SEAL] BEN F. WAPLE,  
Acting Secretary.

1. Section 0.404 is amended by adding a new paragraph (f) to read as follows:

#### SEC. 0.404. *Public reference rooms.*

(f) The Frequency Registration and Notification Branch of the Frequency Allocations and Treaty Division, Office of Chief Engineer. Here the public may inspect the Frequency Records of the Commission.

2. Section 0.406(g) is amended to read as follows:

#### SEC. 0.406 *Inspection of records.*

(g) Lists of frequency assignments to radio stations authorized by the Commission are recapitulated periodically by means of a machine record system. All stations licensed by the Commission are included, except the following: Aircraft, Amateur, Citizens (except Class A), Civil Air Patrol, and Disaster. The resulting Documents, the F.C.C. Service Frequency Lists, consist of several vol-

umes arranged by Class of Service, in frequency order, including station locations, call signs and other technical particulars of each assignment. These Documents are available for public examination at each of the Commission's Field Engineering and Monitoring Bureau Field Offices, and in Washington, D.C., at the Commission's Broadcast and Docket Reference Room, and in the Offices of the Frequency Registration and Notification Branch. They may be purchased from the Electronic Industries Association, 1721 De Sales Street NW., Washington 6, D.C.

3. Section 0.407 is amended to read as follows:

SEC. 0.407 *Certified copies; requests for; costs.* Copies of any documents subject to inspection under the provisions of section 0.406, with the exception of F.C.C. Service Frequency Lists described in section 0.406(g), will be prepared and certified by the Secretary, under seal, on written request, specifying the exact documents, the number of copies desired, and the date on which the same will be required. Such request must be made so as to permit a reasonable time for the preparation of such copies and any cost incurred in the preparation of such copies must be prepaid by the person making application therefor: *Provided, however*, That, if requests are received from representatives of foreign governments or from persons residing in foreign countries, the criteria established by the Department of Commerce for the control of export of technical data will be taken into account before such certified copies will be made available.

[F.R. Doc. 60-6632; Filed, July 15, 1960;  
8:49 a.m.]

[Docket No. 13484; FCC 60M-1198]

### CANANDAIGUA BROADCASTING CO., INC.

#### Order Continuing Hearing

In re application of Canandaigua Broadcasting Company, Inc., Canandaigua, New York, Docket No. 13484, File No. BP-13031; for construction permit.

*It is ordered*, This 12th day of July 1960, due to the illness of the presiding Hearing Examiner, that hearing in the above-entitled proceeding, scheduled to commence on July 18, 1960, is hereby continued without date.

Released: July 12, 1960.

FEDERAL COMMUNICATIONS  
COMMISSION,

[SEAL] BEN F. WAPLE,  
Acting Secretary.

[F.R. Doc. 60-6634; Filed, July 15, 1960;  
8:49 a.m.]

[Docket No. 12615 etc.; FCC 60M-1202]

### COOKEVILLE BROADCASTING CO. ET AL.

#### Order Scheduling Hearing

In re applications of Hamilton Parks, tr/as Cookeville Broadcasting Company, Cookeville, Tennessee, et al., Docket Nos.

12615, 12960, 12962, 12964, 12965, 12966, 12968, 12971, 12972, 12973, 12974, 12978, 12979, 12981, 12982; File No. BP-11518; for construction permits.

The Chief Hearing Examiner having under consideration the circumstance that the presiding officer originally appointed in the above-entitled proceeding became unavailable to the Commission after commencement of the taking of testimony and that the participating parties consent to the appointment of another presiding officer forthwith;

It appearing that, during a conference of counsel held July 12, 1960, it was proposed that the presiding officer herein-after designated should convene a hearing on July 27, 1960;

*It is ordered*, This 12th day of July 1960, that Herbert Sharfman will serve as presiding officer in the above-entitled proceeding.

Released: July 12, 1960.

FEDERAL COMMUNICATIONS  
COMMISSION,  
[SEAL] BEN F. WAPLE,  
*Acting Secretary.*

[F.R. Doc. 60-6635; Filed, July 15, 1960;  
8:49 a.m.]

[Docket No. 13222, etc.; FCC 60-809]

# MICHIGAN BROADCASTING CO. ET AL.

## Order Designating Applications for Consolidated Hearing on Stated Issues

In re applications of Michigan Broadcasting Company (WBCK), Battle Creek, Michigan, et al., Docket Nos. 13222, 13223, 13224, 13225, 13226, 13227, 13228, 13229, 13230, 13231, 13232, 13233, 13235, 13237, 13239, 13241, 13242, 13243, 13245, 13246, 13247, 13248, 13249, 13250, 13251; File No. BP-11439; Muskingum Broadcasting Company, Zanesville, Ohio, Requests: 940 kc, 1 kw, DA, Day, Docket No. 13654, File No. BP-13157; for construction permits.

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 7th day of July 1960;

The Commission having under consideration the above-captioned and described applications;

It appearing that by an Order adopted October 21, 1959, and released October 28, 1959, the Commission designated for hearing in a consolidated proceeding, the above-captioned applications of Michigan Broadcasting Company, Docket Nos. 13222, et al.; that on December 16, 1959, the Commission granted the request of the Muskingum Broadcasting Company that its above-described application for a new standard broadcast station in Zanesville, Ohio, be reinstated as of May 15, 1959, the day on which it was originally tendered for filing; that the Muskingum proposal is therefore timely filed and involves objectionable interference with the proposals of BP-12812, BP-12779, BP-12319, BP-11736, BP-12640, BP-13088, BP-12498, and BP-12352 in the above-captioned proceeding, and that therefore its application should be

designated for hearing in said consolidated proceeding; and

It further appearing that except as indicated by the issues specified below, the Muskingum Broadcasting Company is legally, technically, financially and otherwise qualified to construct and operate its instant proposal; and

It further appearing, that pursuant to section 309(b) of the Communications Act of 1934, as amended, the Commission, in a letter dated April 14, 1960, and incorporated herein by reference, notified the instant applicant, and any other known parties in interest, of the grounds and reasons for the Commission's inability to make a finding that a grant of its application would serve the public interest, convenience, and necessity; and that said application would be designated for hearing in the consolidated proceeding with other applications in the Michigan Broadcasting Company proceeding; and that a copy of the aforementioned letter is available for public inspection at the Commission's offices; and

It further appearing that the said applicant filed a timely reply to the aforementioned letter, which reply has not, however, entirely eliminated the grounds and reasons precluding a grant of said application and requiring an evidentiary hearing on the particular issues herein-after specified; and

It further appearing, that in the 309(b) letter of April 14, 1960, to the Muskingum Broadcasting Company, questions were raised concerning the applicant's financial qualifications; that, however, in its reply of May 4, 1960, the applicant furnished signed subscription agreements from the stockholders, statements with respect to the amount, the terms of payment and security for the loans, and the terms of repayment and security for the bank loan; that we have determined from this showing that the applicant has sufficient funds available to meet the expenses of the construction and early operation of the station; and that, therefore, the applicant is financially qualified; and

It further appearing, that in response to the letter the Muskingum Broadcasting Company submitted an amendment which, inter alia, proposes changes in the directional antenna system; that the amendment was accepted on May 16, 1960, pursuant to the provisions of § 1.354(h) of the Commission rules, as amended, effective April 1, 1960, which permits certain types of engineering amendments without the assignment of a new file number; and that, however, under the provisions of the rule in effect between May 15, 1959, the date other conflicting applications were "cut-off" and October 21, 1959, the date they were designated for hearing, an engineering amendment of this type would require the assignment of a new file number; and

It further appearing that on May 24, 1960, the Citizens Broadcasting Company, an applicant in the above proceeding (940kc, 250w, DA-D, Lima, Ohio), filed a petition requesting the assignment of a new file number to the Muskingum application, or, in the alternative,

that action on the amendment be withheld until after the Muskingum application is consolidated in hearing; that Citizens alleges that Muskingum is trying to "jockey" itself into a preferred 307(b) position since its engineering proposal would, pursuant to the amendment, now be compatible with certain proposals in the hearing to the disadvantage of other competing applications; and, that basic fairness to all other conflicting applications in the proceeding who were precluded by the former provisions of § 1.354(h) of the rules from filing a different engineering proposal prior to designation for hearing without the assignment of a new file number supports its request; and

It further appearing that after consideration of the request of Citizens, other similar requests from other applicants in the proceeding,<sup>1</sup> and our Report and Order of March 24, 1960, wherein we stated our reasons for the relaxation of the rule concerning acceptance of engineering amendments without assigning a new file number, the Commission is of the view that orderly procedure and basic fairness to all the applicants in this involved proceeding requires that Muskingum Broadcasting Company should not be permitted to amend its engineering proposal prior to designation of its application for hearing since it would otherwise be able to improve substantially its position in the hearing;<sup>2</sup> that accordingly, on our own motion,<sup>3</sup> we reconsider our action of accepting the Muskingum amendment of May 4, 1960; that the engineering part of said amendment will be dismissed; and that said application will be consolidated in hearing on its original engineering proposal, as reinstated on December 16, 1959;<sup>4</sup> and

<sup>1</sup> Other pleadings filed in this matter are: A "Joinder in Petition For Assignment of New File Number or other Relief," filed on June 1, 1960, by Continental Broadcasting Company; and a "Petition to Review Acceptance of Amendment and Retention of File Number," filed on June 2, 1960, by Charles H. Chamberlain. Continental (940 kc, 5 kw, DA-D, Cincinnati, Ohio) and Chamberlain (940 kc, 1 kw, Day, Urbana, Ohio) are both applicants for new stations whose applications were among the 31 designated for hearing on October 21, 1959. They support Citizens' basic request. An Opposition to these two pleadings was filed by Muskingum on June 10, 1960. Additionally, a "Motion to Strike" the greater portion of the Chamberlain petition, was filed on June 10, 1960 by Citizens.

<sup>2</sup> Since Citizens' petition is one for reconsideration (pursuant to sec. 202(a) of the rules), the 30 day limitation for acting on our own motion (sec. 1.16) is tolled. *Albertson v. FCC*, 87 U.S. App. D.C. 39; 6 Pike and Fischer RR 2019.

<sup>3</sup> We note that the Hearing Examiner has denied the requests of several applicants in the proceeding to have their engineering proposals amended. The Examiner stated in denying the request of Shelby Broadcasting Company for leave to amend:

"The rudimentary aspects of fair play prohibit an applicant from waiting until it has had an opportunity to analyze the evidentiary proposals of its adversaries and then to shore up its own proposals to the disadvantage of other applicants who have a right to expect to have been apprised of what they are to meet in the hearing." (FCC 60M-591, April 5, 1960.)

It further appearing that after consideration of the foregoing and the applicant's reply, the Commission is still unable to make the statutory finding that a grant of the Muskingum Broadcasting Company application would serve the public interest, convenience, and necessity; and is of the opinion that its application must be designated for hearing as indicated above, on the issues specified below;

*It is ordered,* That, pursuant to section 309(b) of the Communications Act of 1934, as amended, the Muskingum Broadcasting Company application, File No. BP-13157, is designated for hearing on its engineering proposal, as specified in its application reinstated on December 16, 1959, in the consolidated proceeding in Michigan Broadcasting Company, Docket No. 13222, et al., at a time and place to be specified by a subsequent Order, upon the following issues:

1. To determine the areas and populations which would receive new primary service from each of the instant proposals for a broadcast station, and the availability of other primary service to such areas and populations.

2. To determine the areas and populations which may be expected to gain or lose primary service from each of the instant proposals for a change in the facilities of an existing broadcast station and the availability of other primary service to such areas and populations.

3. To determine the nature and extent of the interference, if any, that each of the instant proposals would cause to and receive from each other and all other existing standard broadcast stations, the areas and populations affected thereby, and the availability of other primary service to the areas and populations involved in the interference between the proposals.

4. To determine whether the interference received from any of the other proposals herein and any existing stations would affect more than ten percent of the population within the normally protected primary service area of any one of the instant proposals in contravention of § 3.28(c) (3) of the Commission rules and, if so, whether circumstances exist which would warrant a waiver of said Section.

5. To determine whether the following proposals would involve objectionable interference with the operations indicated below, or any other existing standard broadcast stations, and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other primary service to such areas and populations:

*Proposals and existing stations*

BP-11625 WFPB, Middletown, Ohio.  
BP-11738 WWJ, Detroit, Mich.  
BP-11829 BP-11001, Cape Girardeau, Missouri (Docket No. 12264).  
BP-12213 WLIV, Livingston, Tenn.  
BP-12228 WPEN, Philadelphia, Pa.  
BP-12352 WXLW, Indianapolis, Ind.  
BP-12420 KXJK, Forrest City, Ark.  
WSLI, Jackson, Miss.  
BP-12779 WWJ, Detroit, Mich.  
BP-12812 WESA, Charleroi, Pa.  
WGRP, Greenville, Pa.

BP-12814 WXGI, Richmond, Va.  
BP-12962 WPEN, Philadelphia, Pa.  
BP-13110 WCNB, Bloomsburg, Pa.  
WHYL, Carlisle, Pa.  
WPEN, Philadelphia, Pa.  
BP-13114 WXGI, Richmond, Va.  
BP-13120 WMIX, Mt. Vernon, Ill.  
WXLW, Indianapolis, Ind.  
BP-13150 WFMD, Frederick, Md.  
BP-13153 WNCC, Barnesboro, Pa.  
BP-13157 WEDL, Elyria, Ohio.  
WGRP (CP), Greenville, Pa.

6, 7, 10. (See Footnote 3.)

8. To determine whether the antenna system proposed by WCPC Broadcasting Company (BP-12420), Continental Broadcasting Company (BP-13088), Catonsville Broadcasting Company (BP-13150), Guilford Advertising, Inc. (BP-11742), and Muskingum Broadcasting Company (BP-13157) would constitute a hazard to air navigation.

9. To determine the type and character of program service which would be broadcast by Guilford Advertising, Inc. (BP-11742) and whether the program service would be in the public interest.

11. To determine whether the Miami Valley Christian Broadcasting Association, Inc. (BP-12640) is financially qualified to construct and operate its station as proposed.

12. To determine whether the instant proposals of Seven Locks Broadcasting Company (BP-11877), and Catonsville Broadcasting Company (BP-13150) would serve what is a community within the meaning of section 307(b) of the Communications Act of 1934, as amended.

13. To determine in the light of their location and urban and industrial characteristics, and other relevant factors, whether Delphos, Ohio, and Lima, Ohio, and whether Baltimore, Maryland, and Catonsville, Maryland, are separate communities for the purpose of section 307(b) of the Communications Act of 1934, as amended.

14. To determine, in the light of section 307(b) of the Communications Act of 1934, as amended, which of the instant proposals would best provide a fair, efficient and equitable distribution of radio service.

15. To determine (a) if Delphos and Lima are separate communities, whether Citizens Broadcasting Company and Western Ohio Broadcasting Company will provide service to the community selected as having the greater need for a new facility; and (b) if Baltimore and Catonsville are separate communities, whether Caba Broadcasting Corporation and Catonsville Broadcasting Company will provide service to the community selected as having the greater need for a new facility.

16. To determine, if (a) Lima and Delphos are determined not to be separate communities, or (b) if they are separate communities and if it is determined that Citizens Broadcasting Com-

\*Since this order supersedes previous orders with respect to issues, the Issues 6, 7, and 10 of the original designation order have been deleted as those issues pertained solely to applications which have been dismissed. For convenience other issues have not been renumbered, except that a new Issue 22 has been added, and the former Issue 22 is renumbered 23.

pany and Western Ohio Broadcasting Company would provide service to the community determined to have the greater need for a new facility, which of the proposals of Citizens Broadcasting Company and Western Ohio Broadcasting Company would better serve the public interest in the light of the evidence adduced pursuant to the foregoing issues and the record made with respect to significant differences between the applicants as to:

a. The background and experience of each having a bearing on the applicant's ability to own and operate its proposed station.

b. The proposals of each of the applicants with respect to the management and operation of the proposed station.

c. The programming service proposed in each of the said applications.

17. To determine, on a comparative basis, in the event that Potomac, Maryland, or Smithfield, Virginia is, or are, selected as having the greatest need pursuant to section 307(b), which of the competing applicants for that city would better serve the public interest in the light of the evidence adduced pursuant to the foregoing issues and the record made with respect to the significant differences between the applicants as to:

a. The background and experience of each having a bearing on the applicant's ability to own and operate its proposed station.

b. The proposals of each of the applicants with respect to the management and operation of the proposed station.

c. The programming service proposed in each of the said applications.

18. To determine if (a) Baltimore and Catonsville are determined not to be separate communities, or (b) if they are separate communities and if it is determined that Caba Broadcasting Corporation and Catonsville Broadcasting Company would provide service to the community determined to have the greater need for a new facility, which of the proposals of Caba Broadcasting Corporation and Catonsville Broadcasting Company would better serve the public interest in the light of evidence adduced pursuant to the foregoing issues and the record made with respect to significant differences between the applicants as to:

a. The background and experience of each having a bearing on the applicant's ability to own and operate its proposed station.

b. The proposal of each of the applicants with respect to the management and operation of the proposed station.

c. The programming service proposed in each of the said applications.

19. To determine whether Catonsville Broadcasting Company is financially qualified to construct and operate its proposed station for a reasonable period of time without operating revenue.

20. To determine, in the event Newport News, Virginia, or Smithfield, Virginia, is preferred under Issue 14, whether Edwin R. Fischer and Tidewater Broadcasting Company will provide service to the community selected as having the greater need for a new facility.

21. To determine, if Edwin R. Fischer and Tidewater Broadcasting Company would provide service to the community

determined to have the greater need for a new facility, which of the proposals of these two applicants would better serve the public interest in the light of evidence adduced pursuant to the foregoing issues and the record made with respect to significant differences between the applicants as to:

a. The background and experience of each having a bearing on the applicant's ability to own and operate its proposed station.

b. The proposal of each of the applicants with respect to the management and operation of the proposed station.

c. The programming service proposed in each of the said applications.

22. To determine on a comparative basis in the event Zanesville, Ohio, is preferred under Issue 14, whether Raymond I. Kandel and Gus Zaharis or Muskingum Broadcasting Company would better serve the public interest, convenience and necessity in light of the evidence adduced pursuant to the foregoing issues and the record made with respect to the significant difference between the applicants as to:

a. The background and experience of each having a bearing on the applicant's ability to own and operate its proposed station.

b. The proposals of each of the applicants with respect to the management and operation of the proposed station.

c. The programming service proposed in each of the said applications.

23. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which, if any, of the instant applications should be granted.

*It is further ordered*, That the following licensees of the stations indicated are made parties to the proceeding:

Forrest City Broadcasting Company (KKJK), Forrest City, Ark.

Mr. Paul F. Braden (WPFJ), Middletown, Ohio.

The Evening News Association (WWJ), Detroit, Mich.

Hirsch Broadcasting Co., BP-11001 (KFVS), Cape Girardeau, Mo.

Audie Broadcasters (WLIV), Livingston, Tenn.

William Penn Broadcasting Co. (WPEN), Philadelphia, Pa.

Radio Indianapolis, Inc. (WXLW), Indianapolis, Ind.

WNCC, Inc. (WNCC), Barnesboro, Pa.

Capitol Broadcasting Company, (WSLI), Jackson, Miss.

Monongahela Valley Broadcasting Corp., (WESA), Charleroi, Pa.

Greenville Broadcasting Company, (WGRP), Greenville, Pa.

The Monocacy Broadcasting Company, (WFMD), Frederick, Md.

Columbia-Montour Broadcasting Corp., (WCNR), Bloomsburg, Pa.

Richard F. Lewis, Jr., Inc. of Carlisle, (WHYL), Carlisle, Pa.

Elyria-Lorain Broadcasting Co., (WEOL), Elyria, Ohio.

*It is further ordered*, That, the following licensees who are applicants in the instant proceeding are made parties thereto with respect to their existing operations:

Gulford Advertising, Inc., (WPET), Greensboro, N.C.

Mt. Vernon Radio & Television Company, (WMIX), Mt. Vernon, Ill.

Radio Virginia, Incorporated, (WXGI), Richmond, Va.

*It is further ordered*, That this Order supersedes the Michigan Broadcasting Company hearing order, Docket No. 13222, et al, of October 21, 1959, and the Memorandum Opinion and Orders of May 31, 1960 (FCC 60-599 and 60-598) concerning the enlargement of the issues in the proceeding, with respect to issues only; and

*It is further ordered*, That the engineering part of the amendment submitted on May 4, 1960 by the Muskingum Broadcasting Company is hereby dismissed.

*It is further ordered*, That, in view of the foregoing action on our own motion, the petition of the Citizens Broadcasting Company, filed on May 24, 1960, and other related pleadings, as enumerated in Footnote 1, are dismissed.

*It is further ordered*, That to avail themselves of the opportunity to be heard, the applicant in BP-13157 and Stations WEOL and WGRP pursuant to § 1.140 of the Commission rules, in person or by attorney, shall, within 20 days of the mailing of this order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

*It is further ordered*, That, the issues in the above-captioned proceeding may be enlarged by the Examiner, on his own motion or on petition properly filed by a party to the proceeding, and upon sufficient allegations of fact in support thereof, by the addition of the following issue: To determine whether the funds available to the applicant will give reasonable assurance that the proposals set forth in the application will be effectuated.

Released: July 13, 1960.

FEDERAL COMMUNICATIONS  
COMMISSION,

[SEAL] BEN F. WAPLE,  
Acting Secretary.

[F.R. Doc. 60-6636; Filed, July 15, 1960;  
8:49 a.m.]

[Docket No. 13010; FCC 60-806]

### MID-AMERICA BROADCASTING SYSTEM, INC., ET AL.

#### Order Designating Applications for Consolidated Hearing on Stated Issues

In re applications of Mid-America Broadcasting System, Inc., Highland Park, Illinois, et al., Docket Nos. 13010, 13012, 13014-13053, File No. BP-11689; Pierce E. Lackey and F. E. Lackey, d/b as Chester Broadcasting Company, Chester, Illinois, requests: 1450 kc, 100 w, U, et al., Docket No. 13058, File No. BP-11417; Docket Nos. 13060, 13061; Booth Broadcasting Company (WJLB), Detroit, Michigan, has: 1400 kc, 250 w, U, requests: 1400 kc, 250 w, 1 kw-LS, U, Docket No. 13641, File No. BP-12351; Southern Michigan Broadcasting Corporation, (WELL), Battle Creek, Michigan, has: 1400 kc, 250 w, U, requests:

1400 kc, 250 w, 1 kw-LS, U, Docket No. 13642, File No. BP-12806; Knorr Broadcasting Corporation (WSAM), Saginaw, Michigan, has: 1400 kc, 250 w, U, requests: 1400 kc, 250 w, 1 kw-LS, U, Docket No. 13643, File No. BP-12834; WSJM, Inc. (WSJM), St. Joseph, Michigan, has: 1400 kc, 250 w, U, requests: 1400 kc, 250 w, 1 kw-LS, U, Docket No. 13644, File No. BP-12880; Green Bay Broadcasting Co. (WDUZ), Green Bay, Wisconsin, has: 1400 kc, 250 w, U, requests: 1400 kc, 250 w, 1 kw-LS, U, Docket No. 13645, File No. BP-13014; Racine Broadcasting Corporation (WRJN), Racine, Wisconsin, has: 1400 kc, 250 w, U, requests: 1400 kc, 250 w, 1 kw-LS, U, Docket No. 13646, File No. BP-13146; WPFA Radio, Inc. (WCVS), Springfield, Illinois, has: 1450 kc, 250 w, U, requests: 1450 kc, 250 w, 1 kw-LS, U, Docket No. 13647, File No. BP-13161; Paul A. Brandt (WCBQ), Whitehall, Michigan, has: 1490 kc, 250 w, U, requests: 1490 kc, 250 w, 1 kw-LS, U, Docket No. 13648, File No. BMP-8307; for construction permits.

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 7th day of July, 1960;

The Commission having under consideration the above-captioned and described applications;

It appearing that by an Order adopted July 29, 1959 and released August 12, 1959, the Commission designated for hearing in a consolidated proceeding, the above-captioned applications of Mid-America Broadcasting System, Inc., et al, Docket Nos. 13010 et al; that, on July 27, 1959, the Commission granted the request of Station WCVS, Springfield, Illinois (1450 kc, 250 w, U) that its application to increase power to 1 kw be accepted "nunc pro tunc" as of May 15, 1959, the day on which it was originally tendered without verification; that the WCVS proposal is timely filed and involves objectionable interference with the proposal of WHFC, Cicero, Illinois (BP-12655, Docket No. 13037) on 1450 kc in the Mid-America, et al hearing proceeding and with the proposals of Chester Broadcasting Company, Robert F. Neathery, and Paducah Broadcasting Company, Inc. which, on April 27, 1960, were severed from a consolidated proceeding (Hirsch Broadcasting Company, Docket No. 12264 et al) and retained in hearing; that the proposal of Paul A. Brandt was timely filed and involves objectionable interference with the proposal of WMDN, Midland, Michigan (BP-12718, Docket No. 13040); and that, otherwise the Chester Broadcasting Company, et al hearing proceeding should be consolidated into the Mid-American Broadcasting System, Inc. et al, Docket No. 13010 et al hearing proceeding; and BP-12351, BP-12806, BP-12834, BP-12880, BP-13014, BP-13146, BP-13161 and BMP-8307 should be designated for hearing in the said consolidated proceeding; and

It further appearing that on the basis of the information now before us, each of the instant applicants in BP-12806, BP-12834, BP-12880, BP-13014, BP-13146, BP-13161, and BMP-8307 is legally, technically, financially, and

otherwise qualified, except as indicated by the issues specified below, to construct and operate its instant proposal; and

It further appearing that pursuant to section 309(b) of the Communications Act of 1934, as amended, the Commission, in letters dated November 13, 1959 and March 21, 1960, and incorporated herein by reference, notified the instant applicants, and any other known parties in interest, of the grounds and reasons for the Commission's inability to make a finding that a grant of any one of the applications in BP-12351, BP-12806, BP-12834, BP-12880, BP-13014, BP-13146, BP-13161, and BMP-8307 would serve the public interest, convenience and necessity; and that the said applications should be designated for hearing in a consolidated proceeding on Mid-America; and that BP-11417, BP-12320 and BP-12662 should be consolidated in the Mid-America Broadcasting System, Inc., et al., Docket No. 13010 et al., hearing proceeding; and that copies of the aforementioned letters are available for public inspection at the Commission's offices; and

It further appearing that the said applicants in BP-12351, BP-12806, BP-12834, BP-12880, BP-13014, BP-13146, BP-13161, and BMP-8307 filed timely replies to the aforementioned letters, which replies have not, however, entirely eliminated the grounds and reasons precluding a grant of the said applications and requiring an evidentiary hearing on the particular issues hereinafter specified; and

It further appearing that in the above-referenced letter of November 13, 1959, Booth Broadcasting Company (WJLB), Southern Michigan Broadcasting Corporation (WELL), and Knorr Broadcasting Corporation (WSAM) were informed that, because each licensee has several standard broadcast stations grouped in proximity, substantial questions obtain as to whether grants of their respective requests herein for increased power, would be in contravention of § 3.35(b) of the Commission rules on concentration of control of standard broadcast stations; that in reply to the said letter, each of the said applicants states that it does not believe its proposal is in contravention of § 3.35(b) of the Commission's rules in light of the Commission's action in re: Booth Radio Stations, Inc., 4 Pike and Fischer RR 616 (1948); and in re: Knorr Broadcasting Corporation, 14 Pike and Fischer RR 925, 941 (1958), holding that their respective interests at that time did not constitute a concentration of control in violation of § 3.35(b); but that we believe in view of the instant requests for increase in power, that all the pertinent facts should be developed in the hearing proceeding and that, therefore, an issue concerning concentration of control is included with respect to each of the said applicants; and

It further appearing that after consideration of the foregoing and the applicants' replies, the Commission is still unable to make the statutory finding that a grant of the applications in BP-

12351, BP-12806, BP-12834, BP-12880, BP-13014, BP-13146, BP-13161, and BMP-8307 would serve the public interest, convenience, and necessity; and is of the opinion that the above-captioned applications must be designated for hearing as indicated above on the issues specified below;

It is ordered, That BP-11417, BP-12320 and BP-12662 are consolidated in the Mid-America Broadcasting System, Inc. et al., Docket No. 13010 et al. hearing proceeding and that pursuant to section 309(b) of the Communications Act of 1934, as amended, BP-12351, BP-12806, BP-12834, BP-12880, BP-13014, BP-13146, BP-13161 and BMP-8307 are designated for hearing in the consolidated proceeding in Mid-America, et al., Docket No. 13010 et al., at a time and place to be specified by a subsequent Order upon the following issues:

1. To determine the areas and populations which would receive primary service from each of the instant proposals for a new standard broadcast station, and the availability of other primary service to such areas and populations.

2. To determine the areas and populations which may be expected to gain or lose primary service from each of the instant proposals for a change in facilities of an existing standard broadcast station, and the availability of other primary service to such areas and populations.

3. To determine the nature and extent of the interference, if any, that each of the instant proposals would cause to and receive from each other and all other existing standard broadcast stations, the areas and populations affected thereby, and the availability of other primary service to the areas and populations affected by interference from any of the instant proposals.

4. To determine whether the interference received from any of the other proposals herein and any existing stations would affect more than ten percent of the population within the normally protected primary service area of any one of the instant proposals in contravention of § 3.28(c)(3) of the Commission rules and, if so, whether circumstances exist which would warrant a waiver of said Section.

5. To determine whether the following proposals would involve objectionable interference with the existing standard broadcast stations indicated, or any other standard broadcast stations, and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other primary service to such areas and populations.

#### *Proposals and existing stations*

- |          |                                  |          |   |
|----------|----------------------------------|----------|---|
| BP-11689 | WRMN, Elgin, Ill.                | BP-12232 | WARK, Hagerstown, Md.                         |
|          | WHFC, Cicero, Ill.               |          | WMRF, Lewistown, Pa.                          |
| BP-11872 | WHFC, Cicero, Ill.               |          | WOHI, East Liverpool, Ohio.                   |
| BP-12135 | WMBD, Peoria, Ill.               | BP-12235 | CKCR, Kitchener, Ontario, Canada.             |
| BP-12200 | WBTA, Batavia, N.Y.              |          | WESB, Bradford, Pa.                           |
|          | WNBT, Wellsboro, Pa.             |          | WNBT, Wellsboro, Pa.                          |
|          | WCSS, Amsterdam, N.Y.            | BP-12236 | WHLS, Port Huron, Mich.                       |
|          | CFRC, Kingston, Ontario, Canada. |          | WKMF, Flint, Mich.                            |
| BP-12216 | WARD, Johnstown, Pa.             | BP-12282 | WRSW, Warsaw, Ind.                            |
|          | WARK, Hagerstown, Md.            |          | WOPA, Oak Park, Ill.                          |
|          | WGAL, Lancaster, Pa.             | BP-12283 | KRIB, Mason City, Iowa.                       |
|          | WNBT, Wellsboro, N.Y.            | BP-12303 | WDAN, Danville, Ill.                          |
|          |                                  |          | WGEZ, Beloit, Wis.                            |
|          |                                  |          | WNDU, South Bend, Ind.                        |
|          |                                  |          | NEW, BP-11038 (D-12329), Geneva, Ill.         |
|          |                                  |          | NEW, BP-11405 (D-12331), Aurora-Batavia, Ill. |
|          |                                  | BP-12318 | WMRN, Elgin, Ill.                             |
|          |                                  |          | WHFC, Cicero, Ill.                            |
|          |                                  | BP-12344 | WMRF, Lewistown, Pa.                          |
|          |                                  |          | WARK, Hagerstown, Md.                         |
|          |                                  |          | WBCB, Levittown-Fairless Hills, Pa.           |
|          |                                  |          | WAZL, Hazleton, Pa.                           |
|          |                                  | BP-12349 | WANE, Ft. Wayne, Ind.                         |
|          |                                  |          | WHLS, Port Huron, Mich.                       |
|          |                                  |          | WLEC, Sandusky, Ohio.                         |
|          |                                  |          | NEW, BP-11361 (D-12533), Gladwin, Mich.       |
|          |                                  | BP-12357 | WAYB, Waynesboro, Va.                         |
|          |                                  |          | WTOP, Washington, D.C.                        |
|          |                                  | BP-12368 | WATZ, Alpena, Mich.                           |
|          |                                  |          | WIBM, Jackson, Mich.                          |
|          |                                  |          | WPON, Pontiac, Mich.                          |
|          |                                  |          | NEW, BP-11361 (D-12533), Gladwin, Mich.       |
|          |                                  | BP-12395 | WARD, Johnstown, Pa.                          |
|          |                                  |          | WMRF, Lewistown, Pa.                          |
|          |                                  |          | WGAL, Lancaster, Pa.                          |
|          |                                  |          | WCVA, Culpeper, Va.                           |
|          |                                  |          | WTOP, Washington, D.C.                        |
|          |                                  | BP-12442 | WMRF, Lewistown, Pa.                          |
|          |                                  |          | WAZL, Hazleton, Pa.                           |
|          |                                  |          | WBTA, Batavia, N.Y.                           |
|          |                                  | BP-12470 | KLMS, Lincoln, Nebr.                          |
|          |                                  |          | KTOP, Topeka, Kans.                           |
|          |                                  | BP-12494 | WISL, Shamokin, Pa.                           |
|          |                                  |          | WGAL, Lancaster, Pa.                          |
|          |                                  |          | WNBT, Wellsboro, Pa.                          |
|          |                                  |          | WDLC, Port Jervis, N.Y.                       |
|          |                                  |          | WBCB, Levittown-Fairless Hills, Pa.           |
|          |                                  | BP-12504 | WBTA, Batavia, N.Y.                           |
|          |                                  |          | WMGW, Meadville, Pa.                          |
|          |                                  |          | WNBT, Wellsboro, Pa.                          |
|          |                                  | BP-12591 | WABJ, Adrian, Mich.                           |
|          |                                  |          | WBEX, Chillicothe, Ohio.                      |
|          |                                  |          | WJMO, Cleveland Heights, Ohio.                |
|          |                                  |          | WKBV, Richmond, Ind.                          |
|          |                                  |          | WMOA, Marietta, Ohio.                         |
|          |                                  | BP-12644 | WDBQ, Dubuque, Iowa.                          |
|          |                                  |          | WAMV, East St. Louis, Ill.                    |
|          |                                  |          | KDRO, Sedalia, Mo.                            |
|          |                                  |          | KLEE, Ottumwa, Iowa.                          |
|          |                                  |          | NEW, BP-12193 (D-12695), East St. Louis, Ill. |
|          |                                  | BP-12649 | WRAC, Racine, Wis.                            |
|          |                                  |          | WISC, Madison, Wis.                           |
|          |                                  |          | KFIZ, Fond du Lac, Wis.                       |
|          |                                  |          | NEW, BP-11946 (D-12653), Racine, Wis.         |
|          |                                  | BP-12655 | WASK, Lafayette, Ind.                         |
|          |                                  |          | WCVS, Springfield, Ill.                       |
|          |                                  |          | WKEI, Kewanee, Ill.                           |
|          |                                  |          | WHTC, Holland, Mich.                          |
|          |                                  |          | KFIZ, Fond du Lac, Wis.                       |
|          |                                  | BP-12678 | WMGW, Meadville, Pa.                          |
|          |                                  |          | WTCS, Fairmont, W. Va.                        |
|          |                                  |          | WARD, Johnstown, Pa.                          |
|          |                                  | BP-12706 | WGAL, Lancaster, Pa.                          |
|          |                                  |          | WAZL, Hazleton, Pa.                           |
|          |                                  |          | WDLC, Port Jervis, N.Y.                       |
|          |                                  |          | WLDB, Atlantic City, N.J.                     |
|          |                                  |          | NEW, BP-6315 (D-8716), Greenwich, Conn.       |
|          |                                  | BP-12718 | WKMF, Flint, Mich.                            |
|          |                                  |          | WABJ, Adrian, Mich.                           |

BP-12725 WABJ, Adrian, Mich.  
WBEX, Chillicothe, Ohio.  
WDAN, Danville, Ill.  
WFKY, Frankfort, Ky.  
WNDU, South Bend, Ind.  
WMRN, Marion, Ohio.  
NEW, BP-11539 (D-12601), Cincinnati, Ohio.

BP-12763 KLEO, Wichita, Kans.  
KBON, Omaha, Nebr.  
KBKC, Mission, Kans.  
KDMO, Carthage, Mo.  
KDRO, Sedalia, Mo.  
WRJN, Racine, Wis.  
WGES, Chicago, Ill.  
NEW, BP-10253 (D-11763), Lafayette, Ind.

BP-12794 WOPA, Oak Park, Ill.  
WNDU, South Bend, Ind.  
WKBV, Richmond, Ind.  
WTHI, Terre Haute, Ind.  
WKBV, Richmond, Ind.  
WMRN, Marion, Ohio.

BP-12867 WCVB, Culpepper, Va.  
BP-13062 WMDN, Midland, Mich.  
BP-13068 WOHO, Toledo, Ohio.  
WMRN, Marion, Ohio.  
WJBK, Detroit, Mich.

BP-13081 WHLS, Port Huron, Mich.  
NEW, BP-11361 (D-12533), Gladwin, Mich.

BP-13113 WJER, Dover, Ohio.  
WJPA, Washington, Pa.

BP-13127 WLEC, Sandusky, Ohio.  
WJPA, Washington, Pa.  
WHHH, Warren, Ohio.  
WPAR, Parkersburg, W. Va.

BP-13142 WFOB, Postoria, Ohio.  
WIBM, Jackson, Mich.  
WHLS, Port Huron, Mich.  
WANE, Ft. Wayne, Ind.  
WJER, Dover, Ohio.

BMP-8502 WHBC, Canton, Ohio.  
WABJ, Adrian, Mich.  
WMRN, Marion, Ohio.  
WOHL, East Liverpool, Ohio.  
CKCR, Kitchener, Ontario, Canada.

BP-12662 WMGW, Meadville, Pa.  
WAOV, Vincennes, Ind.  
WDSG, Dyersburg, Tenn.  
WRAJ, Anna, Ill.

BP-12351 WSAM, Saginaw, Mich.  
WELL, Battle Creek, Mich.  
WMAN, Mansfield, Ohio.

BP-12806 WSJM, St. Joseph, Mich.  
WCER, Charlotte, Mich.

BP-12834 WJLB, Detroit, Mich.  
WAMM, Flint, Mich.  
WELL, Battle Creek, Mich.  
WTCM, Traverse City, Mich.  
BP-10839 (D-12299), W A M M, Flint, Mich.

BP-12880 WRJN, Racine, Wis.  
WELL, Battle Creek, Mich.  
BP-11285 (D-12302), WIMS, Michigan City, Ind.

BP-13014 WRDB, Reedsburg, Wis.  
WRIG, Wausau, Wis.  
WRJN, Racine, Wis.  
WTCM, Traverse City, Mich.

BP-13146 WDUZ, Green Bay, Wis.  
WRDB, Reedsburg, Wis.  
WRMN, Elgin, Ill.  
WSJM, St. Joseph, Mich.  
WGES, Chicago, Ill.

BP-13161 WAOV, Vincennes, Ind.  
WASK, Lafayette, Ind.  
WKEL, Kewanee, Ill.  
KIRX, Kirksville, Ill.  
WHFC, Cicero, Ill.  
KADY, St. Charles, Mo.  
WMBD, Peoria, Ill.

BMP-8307 WOSH, Oshkosh, Wis.

6. To determine whether the antenna system proposed by Mid-America Broadcasting System, Inc. (BP-11689), by Stevens-Wisner Broadcasting Company (BP-12368), by Friendly Broadcasting

Company (BMP-8502), and by Chester Broadcasting Company (BP-11417) would constitute a hazard to air navigation.

7. To determine whether Mid-America Broadcasting System, Inc. (BP-11689) has a reasonable expectation of securing the transmitter site specified in its instant proposal and, if not, whether said proposal is on a site-to-be-determined basis in contravention of § 3.33 of the Commission rules and, therefore, should be dismissed.

8. To determine whether overlap of the 2 mv/m and 25 mv/m contours would occur between the instant proposal of Seaway Broadcasting Co., Inc. (BP-11872) and the existing and proposed operations of WHFC, Cicero, Illinois, and between the proposals BP-12318, BP-11689 and BP-12778, and if so, whether circumstances exist which warrant a waiver of said rule.

9. To determine whether the transmitter specified by Batavia Broadcasting Corporation (BP-12235) is acceptable for 250 watts power.

10. To determine whether the transmitter site proposed by Paducah Broadcasting Company, Incorporated (BP-12662), is satisfactory with particular regard to any conditions that may exist in the vicinity of the antenna system which would distort the proposed antenna radiation pattern.

11. To determine whether BP-12662, taken in conjunction with BP-11417, herein, are inconsistent applications, in contravention of § 1.308 of the Commission rules, and, if so, whether they should be dismissed.

12. To determine whether the antennas specified by Village Broadcasting Company (BP-12303) and WGAL, Inc. (BP-12344) are in contravention of the provisions of § 3.188(d) of the Commission rules concerning roof-top installations and, if so, whether circumstances exist which would warrant a waiver of said section.

13. To determine whether a grant of the instant proposal of Booth Broadcasting Company (BP-12349) would be in contravention of § 3.35(b) of the Commission rules with respect to concentration of control.

14. To determine whether the instant proposals of Charles B. Axton (BP-12763) and WPFA Radio, Inc. (BP-13161) are in compliance with § 3.24(g) of the Commission rules concerning population within the 1000 mv/m contour, and, if not, whether circumstances exist which would warrant a waiver of said section.

15. To determine whether Charles B. Axton (BP-12763) and Town and Country Broadcasting Co., Inc. (BP-13104) are financially qualified to construct and operate their stations as proposed.

16. To determine the type and character of program service which would be broadcast by Town and Country Broadcasting Co., Inc. (BP-13104) and whether the program service would be in the public interest.

17. To determine whether the site coordinates specified by Civic Broadcasting Corporation (BP-12200) properly reflect the transmitter location.

18. To determine whether the transmitter site proposed by each of the following proposals is satisfactory with particular regard to any conditions that may exist in the vicinity of the antenna system which would distort the proposed antenna radiation pattern, and, if so, to determine what means will be used to insure satisfactory operation in the manner proposed:

Batavia Broadcasting Corporation (BP-12235).  
WGAL, Inc. (BP-12344).  
United Broadcasting Company of Western Maryland, Inc. (BP-12395).  
East Liverpool Broadcasting Company (BP-12678).  
O'Keefe Broadcasting Company, Inc. (BP-12706).  
Shawnee Broadcasting Company (BP-12867).  
Charles B. Axton (BP-12763).  
WPFA Radio, Inc. (BP-13161).

19. To determine whether the instant application of Friendly Broadcasting Company (BMP-8502) and its application for increase in antenna height (BMP-8457) are multiple applications within the meaning of § 1.310 of the Commission rules, and, if so, whether the instant application (BMP-8502) should be dismissed.

20. To determine whether the proposal of BP-12806 (WELL) is in contravention of § 3.188(d) of the rules and if so, whether circumstances warrant waiver of the rules.

21. To determine whether a grant of the proposals of BP-12351 (WJLB), BP-12806 (WELL) or BP-12834 (WSAM) would be in contravention of § 3.35(b) of the Commission rules with respect to concentration of control.

22. To determine whether overlap of the 2 mv/m and 25 mv/m contours would occur between the instant proposal of BP-13161 (WCVS) and WMBD, Peoria, Illinois, in contravention of § 3.37 of the Commission rules, and, if so, whether circumstances exist which would warrant a waiver of said section.

23. To determine, in the light of section 307(b) of the Communications Act of 1934, as amended, which of the instant proposals would best provide a fair, efficient and equitable distribution of radio service.

24. To determine on a comparative basis which of the competing applicants, if any, for the community or communities selected as having the greater need pursuant to section 307(b), would best serve the public interest, convenience and necessity in light of the evidence adduced pursuant to the foregoing issues and the record made with respect to the significant differences between the applicants as to:

(a) The background and experience of each having a bearing on the applicant's ability to own and operate its proposed station.

(b) The proposals of each of the applicants with respect to the management and operation of the proposed station.

(c) The programing service proposed in each of the said applications.

25. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which, if any, of the instant applications should be granted.

*It is further ordered, That, the following licensees of the stations indicated are made parties to the proceeding:*

Richland Incorporated (WMAN), Mansfield, Ohio.  
 Eaton County Broadcasting Company (WCER), Charlotte, Mich.  
 Binder-Carter-Durham, Inc. (WAMM), Flint, Mich.  
 Mid-Western Broadcasting Company (WTCM), Traverse City, Mich.  
 Northern Indiana Broadcasters, Inc. (WIMS), Michigan City, Ind.  
 William C. Forrest (WRDB), Reedsburg, Wis.  
 WRIG, Inc. (WRIG), Wausau, Wis.  
 J. Richard Sutter, Joseph F. McNaughton, William D. McNaughton general partners, and John T. McNaughton, limited partner, d/b as Elgin Broadcasting Company (WRMN), Elgin, Ill.  
 Radio Station WGES Inc. (WGES), Chicago, Ill.  
 Vincennes Sun Company (WAOV), Vincennes, Ind.  
 Lafayette Broadcasting Inc. (WASK), Lafayette, Ind.  
 WKEI Broadcasting Company (WKEI), Kewanee, Ill.  
 WHFC Incorporated (WHFC), Cicero, Ill.  
 WMBD, Inc. (WMBD), Peoria, Ill.  
 Community Broadcasters, Inc. (KIRX), Kirksville, Mo.  
 KADY Inc. (KADY), St. Charles, Mo.  
 State Gazette Broadcasting Company (WDSG), Dyersburg, Tenn.  
 Value Radio Corporation (WOSH), Oshkosh, Wis.  
 Anna Broadcasting Company (WRAJ), Anna, Ill.

*It is further ordered, That, the following licensees which are applicants in the instant proceeding are made parties thereto with respect to their existing operations:*

Knorr Broadcasting Corporation (WSAM).  
 Southern Michigan Broadcasting Corporation (WELL).  
 WSJM Inc. (WSJM).  
 Booth Broadcasting Company (WJLB).  
 Racine Broadcasting Corporation (WRJN).  
 Green Bay Broadcasting Co. (WDUZ).

*It is further ordered, That this order supersedes the Mid-America Broadcasting System Inc. et al Docket No. 13010 et al. hearing Order and the Chester Broadcasting Company et al, Docket No. 13058 et al (severed and retained in Hearing April 27, 1960) hearing Order with respect to issues only; and*

*It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants in BP-11417, BP-12320, BP-12662, BP-12351, BP-12806, BP-12834, BP-12880, BP-13014, BP-13146, BP-13161, and BMP-8307 and parties respondent herein, pursuant to § 1.140 of the Commission rules, in person or by attorney, shall, within 20 days of the mailing of this order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this order.*

*It is further ordered, That, the issues in the above-captioned proceeding may be enlarged by the Examiner, on his own motion or on petition properly filed by a party to the proceeding, and upon sufficient allegations of fact in support thereof, by the addition of the following issue: To determine whether the funds available to the applicant will give reasonable assurance that the proposals*

*set forth in the application will be effectuated.*

Released: July 13, 1960.

FEDERAL COMMUNICATIONS  
 COMMISSION,  
 [SEAL] BEN F. WAPLE,  
*Acting Secretary.*

[F.R. Doc. 60-6637; Filed, July 15, 1960;  
 8:49 a.m.]

[Docket No. 13513; FCC 60M-1208]

### NATIONAL AMBULANCE AND OXYGEN SERVICE, INC.

#### Order Continuing Hearing

In the matter of National Ambulance and Oxygen Service, Inc., Rochester, New York, Docket No. 13513; order to show cause why the license for special emergency radio station KED-379 should not be revoked, or, in the alternative, why a cease and desist order should not be issued.

The Hearing Examiner having under consideration the stipulation between the parties to the above-entitled proceeding entered into upon the record during a further prehearing conference held on July 12, 1960, at the request of the Commission's Safety and Special Radio Services Bureau, at the Commission's offices, Washington, D.C.; and a motion by the Bureau made on the record for a continuance of the hearing without date pending resolution of a petition for review to be filed with the Commission by the respondent;

It appearing that the referenced stipulation, if the Commission should approve, would enable the Commission to dispose of this proceeding without an evidentiary hearing thereby saving the government as well as the respondent considerable time and expense;

It appearing further that as part of the stipulation the respondent has agreed to file a petition with the Commission seeking a review of the issuance of the show cause order instituting this proceeding, conceding certain facts in issue, and consenting to the issuance of an order to cease and desist, not later than July 29, 1960, failing which it was agreed that the Bureau would itself file an appropriate petition;

It appearing further that all parties consented on the record to the requested continuance and that "good cause" for favorable action on the relief requested has been shown, as indicated above;

*It is ordered, This 12th day of July 1960, that the hearing presently scheduled to commence on July 20, 1960, at Rochester, New York is hereby continued without date;*

*It is ordered further, That the transcript of the further prehearing conference held July 12, 1960 shall be deemed to be part hereof to the extent pertinent with the same force and effect as if it were set forth herein verbatim.*

Released: July 13, 1960.

FEDERAL COMMUNICATIONS  
 COMMISSION,  
 [SEAL] BEN F. WAPLE,  
*Acting Secretary.*

[F.R. Doc. 60-6638; Filed, July 15, 1960;  
 8:49 a.m.]

[Docket No. 13656; FCC 60-819]

### LESTER OSBAND

#### Order Designating Hearing

In the matter of Lester Osband, 445 Chestnut Ridge Road, Woodcliff Lake, New Jersey, Docket No. 13656; applications for renewal of radiotelephone first-class and radiotelegraph second-class operator licenses (P1-2-7940; T2-2-1842).

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 7th day of July, 1960;

The Commission having under consideration the applications of Lester Osband, 445 Chestnut Ridge Road, Woodcliff Lake, New Jersey, for renewal of his radiotelephone first-class and radiotelegraph second-class operator licenses (P1-2-7940; T2-2-1842); and

It appearing that the Commission, in pursuance of its authority under section 303(1) of the Communications Act of 1934, as amended, to issue radio operator licenses to such citizens of the United States as it finds qualified and pursuant to § 1.71 of the Commission's rules directed Lester Osband to supplement his applications for renewal of his radio operator licenses by furnishing answers to certain specified questions, under oath; and

It further appearing that Lester Osband, by letter dated May 16, 1960, refused to answer any of the questions he had been directed to answer; and

It further appearing that in the light of his refusal to answer the questions, the Commission is unable to determine that Lester Osband possesses the requisite qualifications to be the holder of a radio operator license.

*It is ordered, Pursuant to section 303(1) of the Communications Act of 1934, as amended, and § 1.71 of the Commission's rules that the above-entitled application is hereby designated for hearing at the Commission offices in Washington, D.C. at a time and before an Examiner to be specified by subsequent order, upon the following issues to which such hearing shall be confined:*

(1) To determine whether Lester Osband failed to answer lawful questions with respect to his qualifications to be a licensee which the Commission had directed him to answer under oath;

(2) To determine in the light of the evidence adduced under Issue 1 whether Lester Osband possesses the necessary qualifications to hold a radio operator license.

Released: July 13, 1960.

FEDERAL COMMUNICATIONS  
 COMMISSION,  
 [SEAL] BEN F. WAPLE,  
*Acting Secretary.*

[F.R. Doc. 60-6639; Filed, July 15, 1960;  
 8:49 a.m.]

[Docket Nos. 10844, 10845; FCC 60M-1195]

### RADIO ASSOCIATES, INC., AND WLOX BROADCASTING CO.

#### Notice of Conference

In re applications of Radio Associates, Inc., Biloxi, Mississippi, Docket No.

10844, File No. BPCT-1150; WLOX Broadcasting Company, Biloxi, Mississippi, Docket No. 10845, File No. BPCT-1157; for construction permits for new commercial television broadcast stations (Channel 13).

Notice is hereby given that a hearing conference in the above-entitled proceeding will be held at 10:00 a.m. on Friday, July 22, 1960, in Washington, D.C.

Dated: July 11, 1960.

Released: July 12, 1960.

FEDERAL COMMUNICATIONS  
COMMISSION,

[SEAL] BEN F. WAPLE,  
Acting Secretary.

[F.R. Doc. 60-6640; Filed, July 15, 1960;  
8:49 a.m.]

[Docket Nos. 13649-13653; FCC 60-808]

### RADIO CARMICHAEL ET AL.

#### Order Designating Applications for Consolidated Hearing on Stated Issues

In re applications of Radio Carmichael, Sacramento, California, req: 1430 kc, 500 w, DA-Day, Docket No. 13649, File No. BP-12031; Ashley Robison and Gordon A. Rogers, d/b as Redwood City Broadcasting Company, Palo Alto, California, req: 1430 kc, 1 kw, DA-Day, Docket No. 13650, File No. BP-12023; Jack L. Powell and Alyce M. Powell, joint tenants (KVON), Napa, California, has: 1440 kc, 500 w, DA-1, U, req: 1440 kc, 500 w, 1 kw-LS, DA-2, U, Docket No. 13651, File No. BP-12306; Golden Gate Broadcasting Corporation (KSAN), San Francisco, California, has: 1450 kc, 250 w, U, req: 1450 kc, 250 w, 1 kw-LS, U, Docket No. 13652, File No. BP-12376; John Matranga, d/b as Trans-Sierra Radio, Roseville, California, req: 1430 kc, 500 w, DA-Day, Docket No. 13653, File No. BP-12938; for construction permits.

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 7th day of July 1960;

The Commission having under consideration the above-captioned and described applications;

It appearing that upon the basis of information presently before us, and except as indicated by the issues specified below, each of the instant applicants is legally, technically, financially, and otherwise qualified to construct and operate its instant proposal; and

It further appearing that pursuant to section 309(b) of the Communications Act of 1934, as amended, the Commission, in a letter dated December 16, 1959, and incorporated herein by reference, notified the instant applicants, and any other known parties in interest, of the grounds and reasons for the Commission's inability to make a finding that a grant of any one of the applications would serve the public interest, convenience, and necessity; and that a copy of the aforementioned letter is available for public inspection at the Commission's offices; and

It further appearing that the instant applicants filed timely replies to the aforementioned letter, which replies have not, however, entirely eliminated the grounds and reasons precluding a grant of the said applications and requiring an evidentiary hearing on the particular issues hereinafter specified; and

It further appearing that after consideration of the foregoing and the applicants' replies, the Commission is still unable to make the statutory finding that a grant of the applications would serve the public interest, convenience, and necessity; and is of the opinion that the applications must be designated for hearing in a consolidated proceeding on the issues specified below;

It is ordered, That, pursuant to section 309(b) of the Communications Act of 1934, as amended, the instant applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent order, upon the following issues:

1. To determine the areas and populations which would receive primary service from each of the instant proposals for a new broadcast station and the availability of other primary service to such areas and populations.

2. To determine the areas and populations which may be expected to gain or lose primary service from the proposed operation of Stations KVON and KSAN and the availability of other primary service to such areas and populations.

3. To determine the nature and extent of the interference, if any, that each of the instant proposals would cause to and receive from each other and all other existing standard broadcast stations, the areas and populations affected thereby, and the availability of other primary service to the areas and populations affected by interference from any of the instant proposals.

4. To determine whether the following proposals would involve objectionable interference with the existing standard broadcast stations indicated, or any other standard broadcast stations, and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other primary service to such areas and populations.

#### Proposals and existing stations

BP-12031	KMYC, Marysville, Calif. KSTN, Stockton, Calif. KVON, Napa, Calif.
BP-12023	KSAN, San Francisco, Calif. KSTN, Stockton, Calif. KVON, Napa, Calif.
BP-12036	KSTN, Stockton, Calif.
BP-12376	KAGR, Yuba City, Calif. KROG, Sonora, Calif. KVON, Napa, Calif.
BP-12938	KARM, Fresno, Calif. KMYC, Marysville, Calif. KSTN, Stockton, Calif. KVON, Napa, Calif.

5. To determine whether the interference received by each instant proposal from any of the other proposals herein and any existing stations would affect more than ten percent of the population within its normally protected primary service area in contravention of § 3.28 (c) (3) of the Commission rules and, if so, whether circumstances exist which would warrant a waiver of said Section.

6. To determine whether the instant proposal of Station KSAN would provide the coverage of the city sought to be served, as required by § 3.188(d) of the Commission rules.

7. To determine whether overlap of the 2 mv/m and 25 mv/m contours would occur between the instant proposal of BP-12023 and the existing operation of Station KSAN, San Francisco, California in contravention of § 3.37 of the Commission rules, and, if so, whether circumstances exist which would warrant a waiver of said Section.

8. To determine whether overlap of the 2 mv/m and 25 mv/m contours would occur between the instant proposal of BP-12938 and Station KMYC, Marysville, California in contravention of § 3.37 of the Commission rules, and, if so, whether circumstances exist which would warrant a waiver of said Section.

9. To determine whether overlap of the 2 mv/m and 25 mv/m contours would occur between the instant proposal of Station KSAN and the proposal of BP-12023, Palo Alto, California in contravention of § 3.37 of the Commission rules, and, if so, whether circumstances exist which would warrant a waiver of said Section.

10. To determine in the light of section 307(b) of the Communications Act of 1934, as amended, which of the instant proposals would best provide a fair, efficient and equitable distribution of radio service.

11. To determine, in the light of the evidence adduced pursuant to the foregoing issues which, if any, of the instant applications should be granted.

It is further ordered, That, the following licensees of the stations indicated are made parties to the proceeding:

Carlton Broadcasting Corporation (KMYC, Marysville, Calif.).

San Joaquin Broadcasting Company (KSTN, Stockton, Calif.).

James Emile Jaeger (KAGR, Yuba City, Calif.).

Harlan L. Egan and Ralph Bowen d/b as Senora Broadcasting Company (KROG, Sonora, Calif.).

Hatti Harm and George Harm d/b as KARM, The George Harm Station (KARM, Fresno, Calif.).

It is further ordered, That, Jack L. Powell and Alyce M. Powell, joint tenants, who are applicants in the instant proceeding are made parties thereto with respect to their existing operation of KVON, Napa, California.

It is further ordered, That, to avail themselves of the opportunity to be heard, each of the instant applicants and parties respondent, pursuant to § 1.140 of the Commission rules, in person or by attorney, shall, within 20 days of the mailing of this order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this order.

It is further ordered, That, the issues in the above-captioned proceeding may be enlarged by the examiner, on his own motion or on petition properly filed by a party to the proceeding, and upon sufficient allegations of fact in support thereof, by the addition of the following

issue: To determine whether the funds available to the applicant will give reasonable assurance that the proposals set forth in the application will be effectuated.

Released: July 13, 1960.

FEDERAL COMMUNICATIONS  
COMMISSION,

[SEAL] BEN F. WAPLE,  
Acting Secretary.

[F.R. Doc. 60-6641; Filed, July 15, 1960;  
8:50 a.m.]

[Docket No. 12731 etc.; FCC 60-803]

## RADIO STATION WAYX, INC. (WAYX)

### Order Designating Applications for Consolidated Hearing on Stated Issues

In re applications of Radio Station WAYX, Inc. (WAYX), Waycross, Georgia, has: 1230 kc, 250 w, U, requests: 1230 kc, 250 w, 1 kw-LS, U, Docket No. 12731, File No. BP-12295; Radio Gainesville, Inc. (WGGG), Gainesville, Florida, has: 1230 kc, 250 w, U, requests: 1230 kc, 250 w, 1 kw-LS, U, Docket No. 13634, File No. BP-12391; Middle South Broadcasting Company (WBML), Macon Georgia, has: 1240 kc, 250 w, U, requests: 1240 kc, 250 w, 1 kw-LS, U, Docket No. 13635, File No. BP-12459; Fisher Broadcasting Company, Inc. (WSOK), Savannah, Georgia, has: 1230 kc, 250 w, U, requests: 1230 kc, 250 w, 1 kw-LS, U, Docket No. 13636, File No. BP-12726; Ben Hill Broadcasting Corporation (WBHB), Fitzgerald, Georgia, has: 1240 kc, 250 w, U, requests: 1240 kc, 250 w, 1 kw-LS, U, Docket No. 13637, File No. BP-13063; Radio South, Inc. (WXLI), Dublin, Georgia, has: 1230 kc, 250 w, U, requests: 1230 kc, 250 w, 1 kw-LS, U, Docket No. 13638, File No. BMP-8559; for construction permits.

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 7th day of July 1960;

The Commission having under considerations the above-captioned and described applications;

It appearing, that by an Order adopted January 14, 1959 and released on January 16, 1959, the Commission designated for hearing the above-captioned application of Radio Station WAYX, Inc., D. 12731; that the applications of BP-12391, BP-12459, BP-12726, BP-13063, and BMP-8559 were timely filed and therefore entitled to be consolidated in the said hearing, pursuant to § 1.106 of the Commission's rules;

It further appearing, that on August 5, 1959, Radio South, Inc. (WXLI) petitioned by its attorneys that its application (BMP-8559) be consolidated with the applications of Radio Station WAYX, Inc. (Docket No. 12731, File No. BP-12295) and Fisher Broadcasting Company, Inc. (BP-12726) and such other applications as may be entitled to consolidation under Commission Rules; that inasmuch as the application of WXLI was timely filed pursuant to § 1.106 of the Commission's rules, its application is being consolidated with the aforementioned applications; and

It further appearing that on the basis of the information before us, each of the instant applicants in BP-12391, BP-12459, BP-12726, BP-13063, and BMP-8559, is legally, technically, financially, and otherwise qualified, except as indicated by the issues specified below, to construct and operate its instant proposal; and

It further appearing that pursuant to section 309(b) of the Communications Act of 1934, as amended, the Commission, in a letter dated November 18, 1959, and incorporated herein by reference, notified the applicants listed in the preceding paragraph, and any other known parties in interest, of the grounds and reasons for the Commission's inability to make a finding that a grant of any one of the applications would serve the public interest, convenience, and necessity; that the said applications are entitled to consolidation in the hearing proceeding on Radio Station WAYX, Inc., Docket No. 12731; and that a copy of the aforementioned letter is available for public inspection at the Commission's offices; and

It further appearing that the said applicants filed timely replies to the aforementioned letter, which replies have not, however, entirely eliminated the grounds and reasons precluding a grant of the said applications and requiring an evidentiary hearing on the particular issues as hereinafter specified; and in which the applicants stated that they would appear at a hearing on the instant applications; and

It further appearing that after consideration of the foregoing and the applicants' replies, the Commission is still unable to make the statutory finding that a grant of the said applications would serve the public interest, convenience, and necessity; and is of the opinion that the applications must be designated for hearing in a consolidated proceeding with Radio Station WAYX, Inc., Docket No. 12731, on the issues specified below;

It is ordered, That, pursuant to section 309(b) of the Communications Act of 1934, as amended, the applications of Radio Gainesville, Inc. (BP-12391); Middle South Broadcasting Company (BP-12459); Fisher Broadcasting Company, Inc. (BP-12726); Ben Hill Broadcasting Corporation (BP-13063); and Radio South, Inc. (BMP-8559) are designated for hearing in a consolidated proceeding with Radio Station WAYX, Inc. (BP-12295), D. 12731, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine the areas and populations which may be expected to gain or lose primary service from the proposed operations of Stations WAYX, Waycross, Georgia; WGGG, Gainesville, Florida; WBML, Macon, Georgia; WSOK, Savannah, Georgia; WBHB, Fitzgerald, Georgia; and WXLI, Dublin, Georgia and the availability of other primary service to such areas and populations.

2. To determine the nature and extent of the interference, if any, that each of the instant proposals would cause to and receive from each other and all other existing standard broadcast stations, the areas and populations affected thereby,

and the availability of other primary service to the areas and populations affected by interference from any of the instant proposals.

3. To determine whether the following proposals would involve objectionable interference with the existing standard broadcast stations indicated, or any other standard broadcast stations, and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other primary service to such areas and populations.

#### Proposals and existing stations

BP-12295	WSOK, Savannah, Ga.
D-12731	WMAF, Madison, Fla.
BP-12391	WMAF, Madison, Fla.
BP-12459	WBHB, Fitzgerald, Ga.
	WLAG, LaGrange, Ga.
	WTWA, Thomas, Ga.
	WULA, Eufaula, Ala.
	WWNS, Statesboro, Ga.
BP-12726	WALD, Walterboro, S.C.
	WAYX, Waycross, Ga.
	WSBB, New Smyrna Beach, Fla.
BP-13063	WBML, Macon, Ga.
	WPAX, Thomasville, Ga.
	WULA, Eufaula, Ala.
	WWNS, Statesboro, Ga.
BMP-8559	WAYX, Waycross, Ga.
	WBIA, Augusta, Ga.
	WSOK, Savannah, Ga.

4. To determine whether the interference received from any of the other proposals herein and any existing stations would affect more than ten percent of the population within the normally protected primary service area of any one of the instant proposals in contravention of § 3.28(c) (3) of the Commission rules, and, if so, whether circumstances exist which would warrant a waiver of said section.

5. To determine whether any antenna towers exist in the vicinity of the proposed antenna site of Station WSOK which may result in cross-modulation, reradiation, or distortion of the proposed nondirectional antenna pattern.

6. To determine, in the light of section 307(b) of the Communications Act of 1934, as amended, which of the instant proposals would best provide a fair, efficient and equitable distribution of radio service.

7. To determine, in the light of the evidence adduced pursuant to the foregoing issues which, if any, of the instant applications should be granted.

It is further ordered, That LaGrange Broadcasting Company, Hickory Hill Broadcasting Company, Dixie Radio, Inc., WWNS, Inc., Walterboro Broadcasting Company, Broadcasters, Inc., Augusta Broadcasting Company, Norman O. Protsman, and H. Wimpy, licensees of Stations WLAG, WTWA, WULA, WWNS, WALD, WSBB, WBIA, WMAF and WPAX, respectively, are made parties to the proceeding.

It is further ordered, That, the following applicants in the instant proceeding are made parties hereto with respect to their existing operations:

Radio Station WAYX, Inc. (WAYX).  
Middle South Broadcasting Company (WBML).  
Fisher Broadcasting Company, Inc. (WSOK).  
Ben Hill Broadcasting Corporation (WBHB).  
Radio South, Inc. (WXLI).

*It is further ordered,* That this order supersedes with respect to issues only, the Commission's Order of January 14, 1959 designating for hearing the application of Radio Station WAYX, Inc.

*It is further ordered,* That, to avail themselves of the opportunity to be heard, those applicants and parties respondent who have not previously filed an appearance herein, pursuant to § 1.140 of the Commission rules, in person or by attorney, shall, within 20 days of the mailing of this order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this order.

*It is further ordered,* That, the issues in the above-captioned proceeding may be enlarged by the Examiner, on his own motion or on petition properly filed by a party to the proceeding and upon sufficient allegations of fact in support thereof, by the addition of the following issue: To determine whether the funds available to the applicant will give reasonable assurance that the proposals set forth in the application will be effectuated.

Released: July 13, 1960.

FEDERAL COMMUNICATIONS  
COMMISSION,

[SEAL] BEN F. WAPLE,  
Acting Secretary.

[F.R. Doc. 60-6642; Filed, July 15, 1960;  
8:50 a.m.]

[Docket No. 13329; FCC 60M-1206]

**RALPH J. SILKWOOD**

#### Order Setting Prehearing Conference

In re application of Ralph J. Silkwood, Klamath Falls, Oregon, Docket No. 13329, File No. BP-12656; for construction permit.

*It is ordered,* This 12th day of July 1960, that all parties, or their counsel, in the above-entitled proceeding are directed to appear for a prehearing conference pursuant to the provisions of § 1.111 of the Commission's rules, at the offices of the Commission in Washington, D.C., at 1 p.m., July 18, 1960.

Released: July 13, 1960.

FEDERAL COMMUNICATIONS  
COMMISSION,

[SEAL] BEN F. WAPLE,  
Acting Secretary.

[F.R. Doc. 60-6643; Filed, July 15, 1960;  
8:50 a.m.]

[Docket No. 13590; FCC 60M-1193]

**REX O. STEVENSON**

#### Order Continuing Hearing

In re application of Rex O. Stevenson, Ojai, California, Docket No. 13590, File No. BP-12418; for construction permit.

Pursuant to agreements reached at the prehearing conference held July 8, 1960, the evidentiary hearing in the above-entitled proceeding is continued from Thursday, September 1, 1960, to Monday, October 10, 1960.

No. 138—11

*It is so ordered,* This the 8th day of July 1960.

Released: July 12, 1960.

FEDERAL COMMUNICATIONS

COMMISSION,

[SEAL] BEN F. WAPLE,  
Acting Secretary.

[F.R. Doc. 60-6644; Filed, July 15, 1960;  
8:50 a.m.]

[Docket No. 13252; FCC 60M-1197]

**TRI-STATE BROADCASTING CO.  
(WGTA)**

#### Order Continuing Hearing

In re application of Tri-State Broadcasting Company (WGTA), Summer-ville, Georgia, Docket No. 13252, File No. BP-12296; for construction permit.

*It is ordered,* This 12th day of July 1960, due to the illness of the presiding Hearing Examiner, that hearing in the above-entitled proceeding, scheduled for July 14, 1960, is hereby continued without date.

Released: July 12, 1960.

FEDERAL COMMUNICATIONS  
COMMISSION,

[SEAL] BEN F. WAPLE,  
Acting Secretary.

[F.R. Doc. 60-6645; Filed, July 15, 1960;  
8:50 a.m.]

[Docket Nos. 13318, 13319; FCC 60M-1205]

**UNITED ELECTRONICS LABORATO-  
RIES, INC., AND KENTUCKIANA  
TELEVISION, INC.**

#### Order Continuing Hearing

In re applications of United Electronics Laboratories, Inc., Louisville Kentucky, Docket No. 13318, File No. BPCT-2640; Kentuckiana Television, Incorporated, Louisville, Kentucky, Docket No. 13319, File No. BPCT-2652; for construction permits for new television broadcast stations (Channel 51).

*It is ordered,* This 12th day of July 1960, due to the illness of the presiding Hearing Examiner, that hearing in the above-entitled proceeding, scheduled for July 25, 1960, is hereby continued without date.

Released: July 13, 1960.

FEDERAL COMMUNICATIONS  
COMMISSION,

[SEAL] BEN F. WAPLE,  
Acting Secretary.

[F.R. Doc. 60-6646; Filed, July 15, 1960;  
8:50 a.m.]

[Docket No. 13630; FCC 60-780]

**UNIVERSAL COMMUNICATIONS CO.**

#### Order Designating Hearing

In re application of Cecil M. Fox, d/b as Universal Communications Company, Docket No. 13630, File No. 3532-C2-R-60; for renewal of the license for Station KQA342, a two-way facility in the Domestic Public Land Mobile Radio Service at Toledo, Ohio.

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 7th day of July 1960;

The Commission having under consideration the above-entitled application for renewal of the license for station KQA342, a two-way communication facility in the Domestic Public Land Mobile Radio Service at Toledo, Ohio; and

It appearing that there is a question, in the light of applicant's recent conviction of violating section 301 of Title 47 of the United States Code, whether the applicant has the necessary technical and character qualifications to be a licensee in this service; and

It further appearing that the applicant was advised by letter, pursuant to the provisions of section 309(b) of the Communications Act of 1934, as amended, as to the reasons why the application cannot be granted without a hearing, which letter was replied to by applicant, and that reply having been considered;

*It is ordered,* That pursuant to the provisions of section 309(b) of the Communications Act of 1934, as amended, the above-entitled application is designated for hearing at the Commission's offices in Washington, D.C. on a date to be hereafter specified, upon the following issues:

(a) To determine, in the light of the applicant's recent conviction of violating section 301 of Title 47 of the United States Code, whether the applicant has the necessary technical and character qualifications to be a licensee in this service.

(b) To determine, in the light of the evidence adduced on the foregoing issue, whether a grant of the application would serve the public interest, convenience or necessity.

*It is further ordered,* That the Chief, Common Carrier Bureau is made a party to the proceedings herein;

*It is further ordered,* That the parties desiring to participate herein shall file their appearances in accordance with § 1.140 of the Commission's rules.

Released: July 13, 1960.

FEDERAL COMMUNICATIONS  
COMMISSION,

[SEAL] BEN F. WAPLE,  
Acting Secretary.

[F.R. Doc. 60-6647; Filed, July 15, 1960;  
8:50 a.m.]

[Docket Nos. 13397-13407; FCC 60M-1194]

**YORK COUNTY BROADCASTING CO.  
(WRHI)**

#### Memorandum Opinion and Order Continuing Hearing

In re applications of James S. Beaty, Jr., William C. Beaty and Harper S. Gault, d/b as York County Broadcasting Company (WRHI), Rock Hill, South Carolina, et al., Docket Nos. 13397-13407, File No. BP-12178; for construction permits.

1. Clearwater Radio, Inc., licensee of Station WTAN, Clearwater, Florida, and an applicant in this proceeding (Docket No. 13407) filed a request for extension

of scheduled dates for the applicants in Group A on June 28, 1960. The first date which the petitioner sought to have extended was July 8, the date previously set for exchange of engineering exhibits and section 307(b) data. It was impossible for the Hearing Examiner to act upon the petition prior to July 8 and still preserve the time allowed by the Rules for the filing of oppositions. No opposition has been filed and the grounds recited by the petitioner appear to justify a continuance. Under the circumstances, however, the parties may have been reasonably in doubt as to whether the July 8 date would remain or not and it would be inequitable to penalize any party if it failed to exchange exhibits on that date. As a consequence the new date for exchange of engineering exhibits will be set at August 8, 1960.

2. The new schedule to be followed for the applicants in Group A of this proceeding will be as follows:

- (a) August 8, 1960, for exchange of engineering exhibits and 307(b) data;
- (b) August 22, 1960, notification as to witnesses desired for cross-examination;
- (c) September 19, 1960, commencement of hearing upon all issues.

Therefore, it is ordered, This 11th day of July 1960, that the request of Clearwater Radio, Inc. for extension of scheduled dates for applicants in Group A of this proceeding is granted and the new schedule shall be as set forth above; and

It is further ordered, That the hearing on Group A is continued from July 28 to September 19, 1960.

Released: July 12, 1960.

FEDERAL COMMUNICATIONS  
COMMISSION,

[SEAL] BEN F. WAPLE,  
Acting Secretary.

[F.R. Doc. 60-6648; Filed, July 15, 1960;  
8:50 a.m.]

## HOUSING AND HOME FINANCE AGENCY

Office of the Administrator

ACTING REGIONAL ADMINISTRATOR,  
REGION III, ATLANTA

Designation

Correction

In F.R. Document 60-6429 appearing in the issue for Tuesday, July 12, 1960, at page 6548, paragraph 3 should read as follows:

3. Regional Counsel.

## INTERSTATE COMMERCE COMMISSION

FOURTH SECTION APPLICATIONS  
FOR RELIEF

JULY 13, 1960.

Protests to the granting of an application must be prepared in accordance

with Rule 40 of the general rules of practice (49 CFR 1.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

### LONG-AND-SHORT HAUL

FSA No. 36381: *Bituminous Coal—Alabama to Boykin, Fla.* Filed by O. W. South, Jr., Agent (SFA No. A3984), for interested rail carriers. Rates on bituminous coal, in carloads, as described in the application from L&N and St. L.-S.F. Ry. mines in Alabama to Boykin, Fla.

Grounds for relief: Grouping.

Tariff: Supplement 41 to Southern Freight Association tariff I.C.C. S-39.

FSA No. 36382: *Ferro-Phosphorus—Sheffield, Ala., to Jeffersonville, Ind.* Filed by O. W. South, Jr., Agent (SFA No. A3982), for interested rail carriers. Rates on ferro-phosphorus, in carloads from Sheffield, Ind., to Jeffersonville, Ind., and Louisville, Ky.

Grounds for relief: Barge competition.

Tariff: Supplement 119 to Southern Freight Association tariff I.C.C. 1376.

FSA No. 36383: *Cement—Cementdale, Ohio, to Indiana, Kentucky, and Ohio.* Filed by Traffic Executive Association-Eastern Railroads, Agent (No. CTR No. 2438), for interested rail carriers. Rates on cement, cement clinker, and dry building mortar, in carloads, as described in the application from Cementdale, Ohio, to specified points in Indiana, Kentucky and Ohio.

Grounds for relief: Market competition, short-line distance formula and grouping.

Tariff: Supplement 33 to Traffic Executive Association-Eastern Railroads tariff I.C.C. C-56.

FSA No. 36384: *Cement—Fairborn, Ohio to Illinois territory.* Filed by Traffic Executive Association-Eastern Railroads, Agent (CTR No. 2439), for interested rail carriers. Rates on cement, cement clinker, and dry mortar, in carloads, as described in the application from Fairborn, Ohio, to specified points in Illinois Freight Territory.

Grounds for relief: Short-line distance formula, and grouping.

Tariff: Supplement 33 to Traffic Executive Association-Eastern Railroads tariff I.C.C. C-56.

FSA No. 36385: *Substituted service—N&W and PRR for Midwest Haulers, Inc.* Filed by Midwest Haulers, Inc. (No. 29), for interested carriers. Rates on property loaded in trailers and transported on railroad flat cars between Norfolk, Va., on the one hand, and Chicago and East St. Louis, Ill., and Cincinnati and Columbus, Ohio, on the other, on traffic originating at or destined to such points or points beyond as described in the application.

Grounds for relief: Motor-truck competition.

Tariff: Supplement 7 to Midwest Haulers, Inc., MF-I.C.C. 22.

FSA No. 36386: *Substituted service—Wabash RR for Midwest Haulers, Inc.* Filed by Midwest Haulers, Inc. (No. 30), for interested carriers. Rates on property loaded in trailers and transported on railroad flat cars between Toledo, Ohio and Chicago, Ill., on traffic originat-

ing at or destined to such points or points beyond as described in the application.

Grounds for relief: Motor-truck competition.

Tariff: Supplement 7 to Midwest Haulers, Inc., MF-I.C.C. 22.

FSA No. 36387: *Substituted service—B&M, Et Al., for Midwest Haulers, Inc.* Filed by Midwest Haulers, Inc. (No. 31), for interested carriers. Rates on property loaded in trailers and transported on railroad flat cars between North Adams, Mass., on the one hand, and Chicago and E. St. Louis, Ill., Cincinnati, Cleveland and Toledo, Ohio, Detroit, Mich., Indianapolis, Ind., Louisville, Ky., and Pittsburgh, Pa., on traffic originating at or destined to such points or points beyond as described in the application.

Grounds for relief: Motor truck competition.

Tariff: Supplement 7 to Midwest Haulers, Inc., MF-I.C.C. 22.

FSA No. 36388: *Substituted service—Wabash RR for Midwest Haulers, Inc.* Filed by Midwest Haulers, Inc. (No. 32), for interested carriers. Rates on property loaded in trailers and transported on railroad flat cars between Detroit, Mich., and Buffalo, N.Y., on traffic originating at or destined to such points or points beyond as described in the application.

Grounds for relief: Motor-truck competition.

Tariff: Supplement 7 to Midwest Haulers, Inc., MF-I.C.C. 22.

By the Commission.

[SEAL] HAROLD D. MCCOY,  
Secretary.

[F.R. Doc. 60-6622; Filed, July 15, 1960;  
8:47 a.m.]

## SECURITIES AND EXCHANGE COMMISSION

[File No. 1-1634]

RENNER CO.

Notice of Application To Withdraw  
From Listing and Registration and  
of Opportunity for Hearing

JULY 12, 1960.

In the matter of the Renner Company, Common Stock; File No. 1-1634.

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-1(b) promulgated thereunder, to withdraw the specified security from listing and registration on the Pittsburgh Stock Exchange.

The reasons alleged in the application for withdrawing this security from listing and registration include the following: About 75 percent of the stock is closely held. It is selling for less than \$1 per share. Delisting will save expenses and may tend to create local interest.

Upon receipt of a request, on or before July 29, 1960, from any interested person for a hearing in regard to terms to be imposed upon the delisting of this secur-

ity, the Commission will determine whether to set the matter down for hearing. Such request should state briefly the nature of the interest of the person requesting the hearing and the position he proposes to take at the hearing with respect to imposition of terms. In addition, any interested person may submit his views or any additional facts bearing on this application by means of a letter addressed to the Secretary of the Securities and Exchange Commission, Washington 25, D.C. If no one requests a hearing on this matter, this application will be determined by order of the Commission on the basis of the facts stated in the application and other information contained in the official file of the Commission pertaining to the matter.

By the Commission.

[SEAL]

ORVAL L. DuBOIS,  
Secretary.

[F.R. Doc. 60-6616; Filed, July 15, 1960;  
8:47 a.m.]

## TARIFF COMMISSION

[AA1921-14]

### BICYCLES

#### Notice of Investigation

Having received advice from the Treasury Department on July 11, 1960 that bicycles from Czechoslovakia are being, or are likely to be, sold in the United States at less than fair value, the United States Tariff Commission has instituted an investigation under section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)), to determine whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States.

No hearing in connection with this investigation has been ordered. If a hearing is ordered, due notice of the time and place thereof will be given. In this connection, interested parties are referred to § 208.4 of the Commission's rules of practice and procedure (19 CFR 208.4) which provides that interested parties may, within 15 days after the date of publication of this notice in the FEDERAL REGISTER, request that a public hearing be held, stating reasons for the request.

Any interested party may submit to the Commission a written statement of information pertinent to the subject matter of this investigation. Fifteen clear copies of such statement should be submitted. Information which an interested party desires to submit in confidence should be submitted on separate pages, each clearly marked "Submitted in Confidence". Written statements should be filed not later than August 12, 1960.

Issued: July 13, 1960.

By order of the Commission.

[SEAL]

DONN N. BENT,  
Secretary.

[F.R. Doc. 60-6652; Filed, July 15, 1960;  
8:51 a.m.]

## SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Area 287]

### KENTUCKY

#### Declaration of Disaster Area

Whereas, it has been reported that during the month of June 1960, because of the effects of certain disasters, damage

resulted to residences and business property located in certain areas in the State of Kentucky;

Whereas, the Small Business Administration has investigated and has received other reports of investigations of conditions in the areas affected;

Whereas, after reading and evaluating reports of such conditions, I find that the conditions in such areas constitute a catastrophe within the purview of the Small Business Act.

Now, therefore, as Administrator of the Small Business Administration, I hereby determine that:

1. Applications for disaster loans under the provisions of section 7(b) of the Small Business Act may be received and considered by the Offices below indicated from persons or firms whose property situated in the following Counties (including any areas adjacent to said Counties) suffered damage or destruction as a result of the catastrophe hereinafter referred to:

Counties: Webster, Henderson and Union (flood and tornado occurring on or about June 28 and 29, 1960).

Offices: Small Business Administration Regional Office, Standard Building, Fourth Floor, 1370 Ontario Street, Cleveland 13, Ohio. Small Business Administration Branch Office, Commonwealth Building, Room 1900, Fourth and Broadway, Louisville 2, Ky.

2. No special field offices will be established at this time.

3. Applications for disaster loans under the authority of this Declaration will not be accepted subsequent to January 31, 1961.

Dated: July 5, 1960.

PHILIP MCCALLUM,  
Administrator.

[F.R. Doc. 60-6617; Filed, July 15, 1960;  
8:47 a.m.]

## CUMULATIVE CODIFICATION GUIDE—JULY

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